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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,
Plaintiff,
vs. CASE NO.: 3:06cv544-WHA
PHENIX CITY, ALABAMA, et al.,
Defendants.

VOLUME III

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JURY TRIAL PROCEEDINGS

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BEFORE THE HONORABLE W. HAROLD ALBRITTON, UNITED
STATES DISTRICT JUDGE, and a jury, at Opelika, Alabama, on
Wednesday, March 5, 2008, commencing at 9:04 a.m.

APPEARANCES:

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9 Proceedings reported stenographically;
 transcript produced by computer.

10 * * * * *

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(The following proceedings were heard before the Honorable W. Harold Albritton, United States District Judge, and a jury, at Opelika, Alabama, on Wednesday, March 5, 2008, commencing at 9:04 a.m.:)

(Call to Order of the Court)

THE COURT: Good morning, ladies and gentlemen. You have some notebooks that have been passed out to you, and I'll tell you what those are. These are exhibits that both sides have agreed are admitted in this case that may be referred -- will be referred to from time to time. And so you need not be concerned as to whether any of these exhibits are for you to consider; they are. Both sides agree that these are documents that you should have. And for your convenience, they've distributed them so each of you will have a copy. I'll ask you not to get concerned with what's in the book and thumbing through and reading it rather than listening to the witnesses. They'll point to you an exhibit that you should look at. So they're there for your convenience.

All right. Mr. Steele, call your next witness.

1 MR. STEELE: Thank you, Your Honor. We'd like to call
2 Chief Hunter to the stand.

3 (The witness is sworn)

4 THE CLERK: Be seated.

5 **WALLACE BURNS HUNTER**, the witness, having been duly
6 sworn, testified, as follows:

7 DIRECT EXAMINATION

8 BY MR. STEELE:

9 Q. Good morning, Chief.

10 A. Good morning.

11 Q. Would you please state your name for the record.

12 A. Wallace Burns Hunter.

13 Q. And your current position?

14 A. I'm the fire chief of Phenix City Fire and Rescue.

15 Q. And Chief, how long have you been fire chief in Phenix City?

16 A. I've been -- this is getting ready to be three years. Three
17 years in May.

18 Q. And were you previously at an earlier time fire chief as
19 well?

20 A. Yes, sir.

21 Q. And when was that?

22 A. That was in July of 2001.

23 Q. Okay. Only for July?

24 A. No, sir. July of 2001 until December of 2001.

25 Q. Okay. And what happened in December 2001?

1 A. Chief Prater became the fire chief.

2 Q. Did you remain with the department after that?

3 A. Yes, sir.

4 Q. Was there a particular reason that you stopped being fire
5 chief at that point?

6 A. Yes, sir. I stopped being the fire chief because my family
7 couldn't stand the death threats I was receiving.

8 Q. Okay. And have things been better since you came back as
9 chief a second time in terms of that?

10 A. Yes, sir.

11 Q. Now, I believe you said that you have been fire chief since
12 May of 2005; is that correct?

13 A. Yes, sir.

14 Q. Were you acting chief for a period of time before that?

15 A. Yes, sir.

16 Q. And what was that period of time?

17 A. I was acting chief in 2001, from 2000 -- acting chief until
18 September of 2001 from July. And when I resigned, I was acting
19 chief under then current city manager Mr. Roberts until
20 December. And I became interim chief again in March of 2005.

21 Q. Okay. So for 2005, focusing on the period that we've been
22 discussing, you were interim chief beginning in March and then
23 actually obtained the official title of chief in May?

24 A. Yes, sir.

25 Q. Now, Chief, if you would, please, turn to Exhibit #7 in the

1 book in front of you.

2 THE COURT: That's the black book, isn't it, for the
3 jury's information, Mr. Steele?

4 MR. STEELE: Yes.

5 THE COURT: All right. That's the black book.

6 Q. And Chief, Plaintiff's Exhibit #7 is a newspaper article
7 from September 2005, correct?

8 A. Yes, sir.

9 Q. And do you recall seeing that article at the time it came
10 out?

11 A. Yes, sir.

12 Q. And were you interviewed for this article?

13 A. I was asked by a reporter about this article.

14 Q. Okay. So you did speak with the newspaper reporter
15 concerning the issues that appear in the article?

16 A. I spoke to -- I directed the newspaper reporter to the city
17 manager. And I also spoke to him and told him that I didn't
18 know anything about a lot of this. I wasn't given a chance to
19 take care of this. That's as far as a lot of my conversation
20 went with the reporter.

21 Q. Okay. But you did have a conversation with the reporter.

22 A. That's correct.

23 Q. Okay. I notice -- is that your picture on the first page of
24 that exhibit?

25 A. Yes, sir.

1 Q. Do you know how the reporter happened to have your picture?

2 A. I'm quite sure it's from an old file with the
3 *Ledger-Enquirer*. I had been fire chief before.

4 Q. Okay. So you think this is from when you were fire chief
5 earlier?

6 A. Yes, sir.

7 Q. Okay. Now -- now, as I understand it, Chief, it's your
8 position that the individuals that were quoted in that article
9 should have followed the chain of command instead of going to
10 that reporter; is that correct?

11 A. That's correct.

12 Q. Now, I want to clarify something, just for the record, and
13 so the jury will know it. Back in April of 2007, do you recall
14 that you gave a deposition in this case?

15 A. Yes, sir.

16 Q. And you were actually designated by the city to provide
17 testimony on its behalf with respect to certain issues; is that
18 correct?

19 A. I believe so.

20 Q. And among those issues were the facts and documents related
21 to the chain of command?

22 A. Yes, sir.

23 Q. And you were also designated to provide testimony on behalf
24 of the city regarding the facts and circumstances relating to
25 Mr. Davis's termination, correct?

1 A. Yes, sir.

2 Q. Now, Chief, is it your position, sir, that it would be a
3 violation of the merit system rules and regulations or
4 department procedures if a firefighter were to speak directly to
5 the media about inadequate staffing? Correct?

6 A. Yes, sir.

7 Q. Would that also be your position with respect to health and
8 safety issues?

9 MR. MCKOON: Judge, I object. The first question was
10 directly to the media. I don't know what this question is.

11 MR. STEELE: Okay.

12 THE COURT: Rephrase the question.

13 MR. STEELE: Sure.

14 Q. Is it also your position that it would be a violation of the
15 merit system rules and department policies if a firefighter
16 spoke directly to the media concerning health and safety without
17 your approval?

18 A. If it's related to the fire service.

19 Q. Okay. And would it, in your opinion, be a violation of the
20 merit system and the department policies if a firefighter were
21 to speak directly to the media concerning, say, insufficient
22 financial resources or inadequate budgeting within the fire
23 department without your approval?

24 A. You need to follow the chain of command, ASOP 12.

25 Q. Okay. So is the answer to that yes?

1 A. Yes, sir.

2 Q. So it's your position and it's the position of the city that
3 these various items that I've mentioned -- inadequate staffing,
4 health and safety, inadequate budgeting -- all of those issues
5 must go through the chain of command and obtain permission
6 before a firefighter could speak to the media on those issues?

7 A. Yes, sir. They're fire-related issues.

8 Q. Now, Chief, I believe you said that ASOP 12 was involved in
9 whether the firefighter could speak to the media on these
10 issues; is that correct?

11 A. Yes, sir. If you exhaust your chain of command, you can
12 speak to anyone you want to. We don't hold anybody back from
13 speaking to anyone. We just want to be given a chance to solve
14 the problem before it gets to -- out of hand.

15 Q. Okay. And Chief, I would ask you to try to constrain your
16 answers to the particular question that's before you. Your
17 counsel's going to have an opportunity to ask you additional
18 questions, of course, later on.

19 If you would, Chief, turn to Exhibit #5 in the notebook in
20 front of you.

21 (Brief pause)

22 Q. You've been able to do that? Does that appear to be a copy
23 of the ASOP 12?

24 A. Yes, sir.

25 Q. Okay. Would you point out for me, please, what part of ASOP

1 12 concerns firefighters' contact with the media?

2 A. Basically, what it says, sir -- it doesn't have the media in
3 here. But it says if a problem cannot be solved, and number
4 three, in the chain of command, then the city manager will
5 arrange a hearing with the city council.

6 Q. Okay. But it doesn't mention the media at all, does it?
7 This particular ASOP 12 is entitled Addressing City Council. It
8 doesn't mention media, newspaper, television, or anything of the
9 like. Isn't that true?

10 A. Number two, it says if a member of the fire department finds
11 it necessary to go outside the department, the fire chief will
12 be given a reasonable time to make an appointment with the
13 public safety director, which is the city manager.

14 Q. Okay. So you think this is not limited to what it says
15 right at the top, addressing city council?

16 A. No. It's an avenue to go outside the department.

17 Q. Well, if you look at number three, though, sir, which you
18 pointed out to us, there's this reference to the problem cannot
19 be solved by anyone in the chain of command, the city manager
20 will arrange a hearing with the city council, correct?

21 A. That's correct.

22 Q. It doesn't say anything about the city manager will arrange
23 a hearing with the local newspaper, does it?

24 A. The city manager will arrange I guess what they're
25 requesting.

1 Q. That's not what this document says, does it, sir?

2 A. No, sir. It --

3 Q. This document speaks to the city council and access to the
4 city council, doesn't it?

5 A. Yes, sir.

6 Q. Now, sir, it is also indeed your position and the position
7 of the city, as you testified on behalf of the city, that even
8 if a firefighter were to raise issues that we previously
9 discussed, safety issues, staffing, budgeting issues and the
10 like -- even if a firefighter raised those through the chain of
11 command and were to do that, the firefighter still would not
12 have the right to go to the media with these same concerns;
13 isn't that correct?

14 A. Repeat that.

15 Q. Sure. We talked about a variety of concerns that you
16 contend a firefighter is not allowed to go directly to the media
17 concerning without going through the chain of command, correct?

18 A. That's correct.

19 Q. All right. And we talked about issues like health and
20 safety and protective gear, insufficient financial resources,
21 those type of topics relating to the fire department, correct?

22 A. Correct.

23 Q. And it's your position, sir, isn't it, and the position of
24 the city that even if a firefighter raised those issues and went
25 through the chain of command, that the firefighter still would

1 not have the right to go to the media with these same concerns?

2 A. Yes, the firefighter would.

3 Q. So it's not your position that the firefighter, after
4 exhausting the chain of command, could not go to the media?

5 A. You can't go directly. If you go through your chain of
6 command, you can go to the media.

7 Q. Okay. So now, going back a moment to your testimony that
8 you gave back in April of 2007 when you were deposed, I am
9 correct, sir, that the testimony you gave there you gave under
10 oath?

11 A. That's correct.

12 Q. And you swore to tell the truth?

13 A. That's correct.

14 Q. And it's your belief and position that in fact you did tell
15 the truth during that deposition; isn't that correct?

16 A. That's correct.

17 MR. MCKOON: Could you let us know the page and where
18 you are?

19 MR. STEELE: Yes. I will be doing that.

20 Your Honor, permission to approach the witness?

21 THE COURT: Yes. This is a copy of his deposition
22 you're giving him?

23 MR. STEELE: Yes.

24 THE COURT: All right.

25 Q. Now, Chief, I've just handed to you a copy of the deposition

1 that you gave in this case on April 4th, 2007. And as you've
2 already testified, you recall attending that deposition and
3 providing testimony on behalf of yourself and on behalf of the
4 city, correct?

5 A. That's correct.

6 Q. Okay. And if you would for me, turn to page 56 of that
7 deposition transcript. And on page 56 of that transcript, do
8 you recall being asked and providing answers to the following
9 question?

10 A. Yes.

11 Q. And you were asked as a 30(b)(6) witness providing testimony
12 on behalf of the city. Question: Is it your position as the
13 chief of the fire department and the Rule 30(b)(6) witness in
14 this case on the following subject, if a firefighter has
15 concerns about public safety or operations in the department or
16 poor morale or understaffing and they exhaust the chain of
17 command, they route their concerns up through their first
18 officer and ultimately to you, do they then -- after you
19 consider the matter, do they then have the right to go to local
20 media and issue -- and state those same exact concerns?

21 Do you see that question, sir?

22 A. Yes, sir.

23 Q. And what was the answer that you gave in your deposition?

24 A. They still don't have the right.

25 Q. And you just testified that you were under oath when you

1 gave that, correct?

2 A. That's correct, sir.

3 Q. So it was at least your position back in April of 2007 that
4 even if a firefighter brought issues relating to the media -- or
5 issues relating to the department through the chain of command
6 all the way to yourself -- you're the head of the department,
7 correct?

8 A. I'm not the end of the chain of command, sir.

9 Q. You are the head of the department, correct, Chief?

10 A. Yes, sir.

11 Q. Okay. And my question to you is if a firefighter brings
12 issues of concern relating to the department all the way through
13 the chain of command, step by step by step to your desk as chief
14 of the department and still is not satisfied, it's your
15 testimony that that firefighter still can't bring those issues
16 directly to the media?

17 A. He hadn't exhausted the chain of command.

18 Q. Sir, please try to answer my question. Is your testimony --
19 did the court reporter make a mistake when she took this down?

20 A. No, sir.

21 Q. Okay. So your answer to that question is that they still
22 don't have the right, even if they bring it all the way up to
23 you, correct?

24 A. I'm not the final step.

25 Q. Well, sir, we've already showed you ASOP 12, and we've

1 pointed out that doesn't say one word about the media, does it?

2 A. Chain of command says the final step is city manager in ASOP
3 12.

4 Q. ASOP 12 is entitled Addressing City Council, sir.

5 A. We're talking about work-related issues.

6 Q. Turn to Exhibit #5. If you want to talk about ASOP 12,
7 we'll go back to Exhibit #5.

8 A. Yes, sir.

9 Q. If you follow the procedures set forth in Exhibit #5, ASOP
10 12, and you raise these work-related issues, when you get down
11 to step three, if the problem cannot be resolved in the chain of
12 command, then the city manager will arrange a hearing with the
13 city council -- now, we'll talk later about what that means or
14 doesn't mean, a hearing with the city council. But there's not
15 one word in here that says if you go through the chain of
16 command, you can then speak to the media, is there?

17 A. As far as the media, if their request is to talk to the
18 media, that's -- this is what we follow, ASOP 12, with
19 work-related issues. If they come to my office, they obviously
20 come to my office with work-related issues. And I have to
21 follow the standard operating procedure. And at the top of that
22 chain is the city manager.

23 Q. Okay, sir. And according to the procedure that you have to
24 follow, according to your testimony, you have to follow ASOP 12
25 with respect to issues of public concern relating to the fire

1 department, correct?

2 A. Correct.

3 Q. And according to ASOP 12, if you follow this procedure that
4 you say has to be followed, it would go up the chain of command
5 to you as chief, to the city manager, and then the city manager
6 will arrange a hearing with the city council. And again, I'm
7 not asking you what that means; we'll get to that later.

8 There's no part in this process that says an individual ever has
9 a right, without permission, to speak to the media, is there?

10 A. Repeat that, sir.

11 Q. There's no part in the process that's set forth in ASOP 12
12 that you keep on referring us to that ever, ever in this process
13 allows an individual access to the media.

14 A. It doesn't say the media, but this is the avenue.

15 Q. So the avenue, if -- and this is your position on behalf of
16 the city. The avenue to -- if you have issues that you want to
17 raise with the media, is to go through ASOP 12.

18 A. That's correct.

19 Q. And we're in agreement that ASOP 12 only provides that the
20 city manager will arrange a hearing with the city council but
21 does not provide for discussion with the media. Is that also
22 correct?

23 A. Sir, let me explain to you. If you meet with --

24 Q. Sir, I have a question before you.

25 A. Yes, sir.

1 Q. And my question is -- actually, I'd like to have it read
2 back so I don't misstate what my question was.

3 (The court reporter read the pending question)

4 Q. Sir?

5 A. Yes, sir.

6 Q. Matter of fact, Chief, this issue of access to the media --
7 during your deposition, you were asked about it a couple of
8 different times. And on occasion after occasion after occasion,
9 your answer was that the individual that goes directly to the
10 media, even if they go through the chain of command, at least up
11 to your level, would still be violating policies and procedures;
12 isn't that correct?

13 A. Yes, sir. But you used the word "directly."

14 Q. I did use the word "directly" after exhausting the chain of
15 command through your level. And they still would not have a
16 right, according to -- to you, to go to the media, correct?

17 A. That's correct. I'm not the final link.

18 Q. They have to use ASOP 12 and somehow hope that the media is
19 at some hearing at the city council. Is that your testimony?

20 A. Sir, the media is at all the meetings of the city council.
21 That is their direct link. The media is present at the city
22 council meetings.

23 Q. Okay. So it's your position that the only way an employee
24 can get to the media is they go through ASOP 12, which doesn't
25 say they can ever get to the media; but then you say they can

1 have the media listen to what they say to the council as a
2 whole.

3 A. No.

4 Q. It doesn't provide in here, does it, sir, that they can talk
5 to a newspaper reporter outside the presence of the city
6 council.

7 A. After they exhaust the chain of command, they can talk to
8 anyone they want.

9 Q. Where in ASOP 12 does it say that, sir?

10 A. It doesn't say that. It says --

11 Q. It doesn't say that.

12 A. -- use your chain of command, and you can talk to anyone.

13 THE COURT: Don't talk at the same time.

14 THE WITNESS: Yes.

15 Q. My question to you, sir, was where in ASOP 12 does it say
16 that. And am I correct your answer was it doesn't say that?
17 Correct?

18 A. Not the media. Not the word "media." No, sir.

19 (Brief pause)

20 MR. STEELE: Your Honor, may I approach?

21 THE COURT: Yes.

22 Q. Chief. Now, Chief, I've just handed you a second deposition
23 transcript. And I'm correct that in this particular case, you
24 had the joy of being deposed twice, correct?

25 A. Yes, sir.

1 Q. And this issue of access to the media was addressed in both
2 depositions? If you -- if you don't recall, just tell me, and
3 I'm going to point you to a spot that might help you.

4 A. I believe so. Just tell me.

5 Q. Okay. Now, there's a discussion at pages 11 to 12 of that
6 November 6th, 2007, deposition concerning access to the media.
7 And the question was asked -- and this was the question: Okay.
8 Where I'm trying to go with this, just so you understand, is
9 that there is a preliminary requirement that before a city
10 employee can talk to the media about any city-related issue,
11 that individual has to exhaust the grievance procedures provided
12 by the city.

13 And your answer was?

14 A. On here, it says: No. We have designated people to talk to
15 the media.

16 Q. Right.

17 A. Which we are talking about two different things here.

18 Q. Well, stick with me, Chief.

19 A. Yes, sir.

20 Q. Your answer was: No. We have designated people to talk to
21 the media. And then you were asked who that might be. And your
22 answer was that it was yourself or whoever you elect, designate
23 as the person in fire prevention or whichever division that they
24 are requesting information from, correct?

25 A. Yes, sir.

1 Q. And then you said that you're one of the people that could
2 talk to the media, right?

3 A. Yes, sir. This is during day-to-day operations.

4 Q. Sir, answer my questions --

5 A. Yes, sir.

6 Q. -- if you could, please.

7 A. Okay.

8 Q. You were asked at that deposition: Does anyone in the fire
9 department have the discretion or opportunity to speak to the
10 media without your prior approval on any issue affecting the
11 department?

12 Do you see that question at page 12 of your deposition
13 transcript?

14 A. That's correct. Yes, sir.

15 Q. And then your answer was: As far as the media?

16 Question: Yes. Your answer: No, sir. We have designated
17 personnel for that. And as far as I'm not here, in my absence,
18 someone would step in my place, and that person would have the
19 authority.

20 That was your answer, correct?

21 A. That's correct.

22 Q. So it is your testimony, sir, that a rank-and-file
23 firefighter who has an issue of public concern that's related to
24 the fire department, according to your deposition that you gave
25 under oath, that individual is not permitted to speak to the

1 media, quote, without your prior approval.

2 A. Sir, you're talking about two different things.

3 Q. Two different things?

4 A. Yes, sir.

5 Q. I'm talking about access to the media, sir.

6 A. Access to the media during day-to-day operations, you have
7 designated personnel that talks to -- you have a chief of fire
8 prevention. You have a chief of training. You have a chief of
9 operations. Those are day-to-day operations. This is something
10 that's a concern that you're talking about that's outside of the
11 scope of those things that is totally different than people
12 that's designated to talk to the media day-to-day on fires and
13 things. It's two totally different things.

14 Q. All right. Well, I'm going to repeat the question once
15 more, and then you can tell me where in the question we were
16 asking you about only day-to-day operations, okay? The
17 question, page 12 of your deposition transcript: Does anyone
18 else in the fire department have the discretion or opportunity
19 to speak to the media without your prior approval on any issue
20 affecting the fire department?

21 That was the question, correct?

22 A. Yes, sir. That was the question.

23 Q. And your answer was: No, sir.

24 A. That -- that was right, except for designated personnel.

25 Q. Except for designated people. So unless someone is --

1 A. On day-to-day operations.

2 Q. Sir, you didn't say that during your deposition, did you?

3 A. I'm sorry, I didn't. But that's -- that's what that's all
4 about.

5 Q. Somehow --

6 A. That's in every fire department in the United States, sir.

7 Q. You didn't say that, sir, during your deposition, did you?

8 A. No, sir. You asked me --

9 Q. No, sir.

10 A. -- did I have people. And I --

11 Q. You were asked directly whether an individual firefighter
12 ever has the opportunity to go to the media on matters of public
13 concern relating to the fire department, and your answer --
14 without your approval, and your answer was no, sir.

15 A. Not on day-to-day operations, no.

16 Q. You agree with me that the question that I just read to you
17 didn't say day-to-day operations?

18 A. No, sir. And I don't -- and I agree with you that it didn't
19 say that, also.

20 Q. You don't agree with me --

21 A. I wasn't asked --

22 Q. -- that the question didn't say day-to-day operations?

23 A. We're talking about two different things, sir.

24 Q. All right. Well, we've gone through it a couple of times.

25 We can go through it once again. You have the transcript in

1 front of you, sir, correct?

2 A. Yes, sir.

3 Q. Question: Does anyone else in the fire department have the
4 discretion or opportunity to speak to the media without your
5 prior approval on any issue affecting the fire department?

6 Right? That's the question.

7 A. Yes, sir. That's the question.

8 Q. I don't see in that question where it limits the scope of
9 the question to day-to-day operations.

10 MR. MCKOON: Your Honor, I'm going to have to object.
11 May we approach for just a second?

12 THE COURT: Well --

13 MR. STEELE: I think this is proper examination.

14 THE COURT: I'm going to let him question him about it.

15 MR. MCKOON: All right. That's fine.

16 THE COURT: He can answer as to how he took the
17 question, but that's legitimate. Go ahead.

18 A. I answered -- sir, I answered: No. We have designated
19 people to talk to the media. And --

20 Q. Okay. My question to you, sir, was the question that I just
21 read on the bottom of page 12 of your transcript does not
22 mention a word limiting that question to day-to-day operations,
23 does it?

24 A. That's correct.

25 Q. Let's turn for a moment, Chief, to the ability of a

1 firefighter to have contact with the city council. We had some
2 reference to that in your testimony already. Now, contact with
3 the city council, you've told us, is addressed and governed by
4 ASOP 12, correct?

5 A. That's correct.

6 Q. And that's Exhibit #5 in the notebook in front of you,
7 correct?

8 A. Yes, sir.

9 Q. Okay. Now, Exhibit #5, in your view, is what controls if an
10 individual wishes -- an individual firefighter wishes to bring a
11 matter relating to the fire department to the city council; is
12 that right?

13 A. That's correct.

14 Q. Now, when you -- when we took your deposition, we asked you
15 not only about access to the media, we also asked you about
16 access to the city council, correct?

17 A. That's correct.

18 Q. And this was at your deposition when you were under oath,
19 correct?

20 A. That's correct.

21 Q. And sir, it was your position as head of the department and
22 testifying on behalf of yourself and the city that firefighters
23 simply can't get to the council to address concerns relating to
24 the fire department; isn't that true?

25 A. Would you show me that?

1 Q. Sure.

2 MR. MCKOON: Can you tell us which deposition you're
3 in?

4 MR. STEELE: Yeah. As soon as I -- it will be the
5 first deposition.

6 MR. MCKOON: Thank you.

7 MR. STEELE: I'll give you a page number in just a
8 moment.

9 Q. Now, Chief, you still have before you the copy from your
10 April 2000 (sic) deposition; is that correct?

11 A. Yes, sir.

12 Q. Okay. And sir, we asked questions concerning access to the
13 city council during that deposition, correct?

14 A. Yes, sir. Let me -- let me locate it.

15 Q. Okay. Sure. I'm sorry.

16 A. That's 75?

17 Q. Yes.

18 A. Yes.

19 Q. Actually, 75 on to 76 --

20 A. Yes, sir.

21 Q. -- but you're on the correct page.

22 A. All right. Go ahead.

23 Q. At the end of 75, we asked -- or you were asked whether ASOP
24 12 that you referred to addresses the subject of the city
25 council. And your answer was: That's correct.

1 Then we asked: Does that mean addressing the city council
2 as a body in a meeting, addressing the city council? And you
3 said: Yes, as a person -- this was written in '98 -- I guess is
4 trying to get there, the body, quote, which is a place you would
5 never get to because it stops at the city manager.

6 That was your answer, correct, sir?

7 A. Let me see. Let me see. You lost me.

8 Q. This is page 76 in the transcript that's before you.

9 A. Okay.

10 Q. And we're looking at lines 3 through -- where's the end of
11 your answer? Six. Do you recall giving that answer during your
12 deposition, that ASOP 12, which was written in '98, according to
13 your testimony, is trying to get there, the body -- referring to
14 the city council? And then you say, quote, which is a place you
15 would never get to because it stops at the city manager.

16 Do you see that, sir?

17 A. Yes, sir. I see that.

18 Q. And that was your testimony at your deposition?

19 A. Let me read -- let me finish reading this.

20 Q. Certainly.

21 (Brief pause)

22 Q. We're on page 76 of your transcript.

23 A. I see exactly.

24 Q. Okay. And are you still reading or are you --

25 A. Yes, sir.

1 Q. Okay.

2 A. That's correct. That's what I said.

3 Q. That is what you said, that the city council was a place you
4 never get because it stops at the city manager.

5 A. No. That -- that's -- it would stop at the city manager, as
6 far as with me.

7 Q. Well, let's go over your answer again. It's on the poster
8 board in front of you, and you've got a copy of the
9 deposition --

10 A. Yes, sir.

11 Q. -- transcript, and we're talking about ASOP 12, and we're
12 asking you whether this is the process that's used to get to the
13 council. And your answer is: Yes, as a person -- this was
14 written in '98 -- I guess is trying to get there.

15 A. Yes.

16 Q. You used the word "trying" --

17 A. Yes.

18 Q. -- to get there, the body. And you said, quote, which is a
19 place you would never get to because it stops at the city
20 manager, correct?

21 A. That's correct.

22 Q. Now, you didn't say that the city manager has discretion or
23 the city manager's policy is all you have to do is go to him,
24 then you can get to the council. You never said that in your
25 deposition, did you?

1 A. No, sir. That's where --

2 Q. Right. You said it stops --

3 A. As for me --

4 Q. -- with the city council -- or the city manager. I'm sorry.

5 A. Yes, sir.

6 Q. And then we asked you this question: In other words, under
7 ASOP 12, firefighters are not permitted to go beyond the city
8 manager and are not permitted to address the city council as a
9 group in a meeting. Is that accurate?

10 Do you see where that question is?

11 MR. MCKOON: What line?

12 A. Yes, sir.

13 MR. STEELE: This is page 76, line 7 through 11.

14 Q. Do you see that, sir?

15 A. Yes, sir, I see that.

16 Q. And would you read your answer that you gave at the
17 deposition?

18 A. Okay. The city manager informs the council of anything
19 that's going on. He would be the one that -- if he had to
20 express something that was -- that was bad, he would be the one
21 that would meet with the city council.

22 Q. So your testimony at your deposition in those two questions
23 is that if someone wanted to address the city council, that's a
24 place they'd never get because it, quote, stops at the city
25 manager and that if there was an issue that needed to get to the

1 council, the city manager is the one that would meet with them
2 and present it.

3 A. That's as far as for with me. In the line of succession
4 with me, it would stop, for me, with the city manager, and the
5 city manager would take it over from there. And that would be
6 up to the city manager to meet with the council.

7 Q. Well --

8 A. That's what I meant in that statement.

9 Q. Oh, that's what you meant in that statement.

10 A. Yes, sir. That's what I meant.

11 Q. That's not what we asked you, did we?

12 A. Well, I was telling you that's what I meant, because that's
13 the way it is.

14 Q. And that's not what you told us when you were under oath at
15 the deposition, was it?

16 A. Yes, sir. That's what I meant.

17 Q. So when we asked whether a firefighter or an employee could
18 get to the city council and your answer was that was a place
19 they would never get because it stops at the city manager, you
20 didn't mean that it stops at the city manager?

21 A. Sir, what I meant is the firefighter wouldn't just walk into
22 the city council. The city manager is the one that would
23 arrange that. That's what I meant by that. It stops at the
24 city manager, as far as for me. Coming up through my chain, it
25 would go to the city manager. And that's who would meet and

1 inform the council. And beyond that, that's what they would
2 take care of between the city manager. It only goes so far.

3 Q. Now, Chief -- Chief --

4 A. Yes, sir.

5 Q. You've already told us that during your deposition you were
6 designated to provide testimony on behalf of the city, correct?

7 A. That's correct.

8 Q. And in this question here -- and it's before you up there --

9 A. Yes, sir.

10 Q. -- we did not ask you what is the limit of your authority as
11 a department head with respect to an employee getting to the
12 city council. We asked your view on ASOP 12. That's a policy
13 of your department, correct?

14 A. That's correct.

15 Q. And it's your contention that people have to follow that
16 policy; is that correct?

17 A. That's correct. Yes, sir.

18 Q. And according to your testimony when you were deposed back
19 in April of 2007, an employee would never get to the city
20 council because it stops at the city manager.

21 A. Yes, sir. Sir, what I was answering to is most of the time,
22 I had been asked whether an employee could go directly to the
23 city council. And I always answered in what my scope and my
24 authority is. And it stops at the city manager.

25 Q. Sir, you don't deny that you gave this answer, do you?

1 A. No, sir. I don't deny it at all.

2 Q. And when you said the city council -- you said, quote, is a
3 place you never get.

4 A. As far as directly walking into the city council. That's
5 what I meant.

6 Q. That's not what you said, though, at that point, is it,
7 sir? You said the city council was, quote, a place you never
8 get.

9 A. As far as directly going into -- I'm sorry if you've
10 mistaken that, but that's what I meant.

11 Q. So it's your contention that when you gave that answer, when
12 you said it's a place you never get, you meant, well, you can
13 get there and that "never" means, I guess, never say never. Is
14 that what you're trying to tell us today, sir?

15 A. Yes, sir. That's what I would be saying.

16 Q. Okay. And it's also now your contention today that when you
17 said -- after saying you would never get to the city council,
18 you said it would stop at the city manager, is it your testimony
19 today that by "stop" you really meant pause and then go?

20 A. I meant as far as my authority, I stop at the city manager.
21 That makes sure that I don't do anything wrong.

22 Q. Sir, sir, did we ask you the extent of your authority in
23 that question, or did we ask whether a member of your department
24 can get to the city council?

25 A. Only thing I can speak on is my extent of authority. When I

1 speak, that's what I speak to.

2 Q. Sir, this ASOP 12, that's part of the standard operating
3 procedures of your department.

4 A. That's correct.

5 Q. And you were under oath, correct?

6 A. Yes, sir.

7 Q. And you provided testimony regarding ASOP 12.

8 A. Yes, sir.

9 Q. And your testimony in April of 2007 is that the city council
10 was a place they'd never get because it stops at the city
11 manager.

12 A. I meant directly.

13 Q. But you didn't say directly.

14 A. I'm sorry.

15 Q. If you would, sir, on the binder in front of you, turn to
16 what's been marked as Plaintiff's Exhibit #29. Are you there
17 with me, sir?

18 A. Yes, sir.

19 Q. Okay. Plaintiff's Exhibit #29 is a memo dated September 21,
20 2005, to you from Assistant Chief Hanson; is that correct?

21 A. Yes, sir.

22 Q. Did you receive this memo on or about September 21, 2005?

23 A. Yes, sir.

24 Q. And in this memo from Chief Hanson, it concerns a counseling
25 with at that point Driver Engineer Taylorson, correct?

1 A. Yes, sir.

2 Q. One of the gentlemen that we spoke to yesterday, correct?

3 A. Yes, sir.

4 Q. And Assistant Chief Hanson reported back to you on the issue
5 of contacts with the media and his counseling of Firefighter
6 Taylorson by -- this is, quote, the last sentence, okay, so
7 you'll know exactly where I'm talking about. The memo says,
8 quote, I advised him that the city would not put up with another
9 episode of speaking to the media without prior approval.

10 Do you see where it says that?

11 A. Yes, sir.

12 Q. And did you agree or disagree with what Chief Hanson put in
13 the memo?

14 A. Those were Chief Hanson's words, they wouldn't put up with.
15 I might have said it in a different way; you know, follow the
16 chain.

17 Q. Do you agree with the substance of what is in here?

18 A. As far as his advice to Sergeant Taylorson?

19 Q. Right.

20 A. Yes, I agree with it.

21 Q. Okay. I just wanted to make sure that you agree that you
22 can't get to the city council, at least according to this memo,
23 without prior approval, correct?

24 A. He meant go through the chain, sir.

25 MR. STEELE: Well, I'm going to ask that that be

1 stricken as to what Hanson meant.

2 THE COURT: I sustain. I'll sustain.

3 That's stricken. Don't consider it.

4 Go ahead.

5 Q. So Chief, as far as access to the media, before we move to
6 another -- another topic, I'm trying to figure out what's going
7 on here. We can either go by what you said in your deposition,
8 which is you never get -- excuse me -- that you never get to the
9 council without going to the city manager and it stops at the
10 city manager, or we can believe that somehow you get there
11 anyway. And with access to the media, we can accept or believe
12 what you just said, that you can't do it without approval, prior
13 approval, or now you're saying that somehow they can get there
14 by a matter of right.

15 A. That's not what I'm saying.

16 Q. Okay. What is it you're saying, sir?

17 A. I'm saying if they follow the chain, you can talk to anyone
18 you want to talk to.

19 Q. Okay. And you believe that that is what ASOP 12 provides.

20 A. I believe -- I believe that. Yes, sir. I totally believe
21 that.

22 Q. Okay. I'd like to talk to you about Mr. Davis's termination
23 from employment. Now, as department head, you don't have the
24 authority yourself to fire an employee; is that correct?

25 A. I make a recommendation.

1 Q. Okay. And the recommendation is made to the city manager,
2 and then the city manager holds the authority to terminate an
3 employee; is that correct?

4 A. I make a recommendation to the city manager and personnel
5 director.

6 Q. Okay. To your knowledge, does the personnel director have
7 the authority to fire a member of your department?

8 A. Does -- does she have the authority?

9 Q. Correct.

10 A. The final decision is going to lie with the city manager.

11 Q. Okay. So the best of your knowledge, Mr. Roberts, the city
12 manager, has the authority to carry out terminations.

13 A. That is correct.

14 Q. So with respect to Mr. Davis, you were not in a position
15 yourself to terminate Mr. Davis, but it's within your discretion
16 as the department head to recommend that that occur. Is that an
17 accurate statement?

18 A. That's correct.

19 Q. Okay. If you would for me, I'd like you to turn to
20 Plaintiff's Exhibit #22 in the binder in front of you.

21 MR. STEELE: And Your Honor, if I didn't already, I'd
22 like to move for the admission of Plaintiff's Exhibit #29, the
23 memo the chief testified to.

24 THE COURT: It's admitted.

25 Q. We're at #22 now.

1 A. Yes, sir.

2 Q. Okay. Would you tell the jury what this document is?

3 A. This is an end of employment form.

4 Q. Okay. And that's an end of employment form for Mr. Davis,
5 correct?

6 A. That's correct.

7 Q. Okay. On this, there's a spot for the employee's signature,
8 and that looks like it might be a signature there. And
9 Mr. Davis says it is his signature, correct?

10 A. That's correct.

11 Q. There's a place for the personnel director's signature, and
12 there's a signature that we will all assume is the personnel
13 director's signature, correct?

14 A. That is correct.

15 Q. There's a place for the department head's signature. Is
16 that your signature there, sir?

17 A. Yes, sir.

18 Q. Okay. And there's a place for the city manager's signature;
19 and you've just told us the city manager has the authority to
20 terminate an employee, not you, correct?

21 A. That's correct. I make recommendation.

22 Q. Okay. Why isn't the city manager's signature on this?

23 A. I can't answer to that. I don't -- you know, this -- this
24 is signed in the personnel office, taken care of there. And --

25 Q. How did you learn that the city manager accepted your

1 recommendation to terminate Mr. Davis?

2 A. Well, they told me, sir.

3 Q. Okay. And that was in person in a meeting or was it the
4 telephone or in writing? How did that happen?

5 A. Well, when we talked about the position and the situation we
6 was in.

7 Q. I'm not sure that I understood --

8 A. As far as talking to the personnel director, when the final
9 papers were to come through --

10 Q. Okay. My --

11 A. -- it was told to me that the city manager agreed.

12 Q. Okay. My question to you was when the city manager told you
13 that he accepted your recommendation, was that done in person,
14 at a meeting, by telephone, in writing, or some other means?

15 A. It --

16 Q. How did he communicate that to you?

17 A. It was in person with the personnel director.

18 Q. Now, in this particular case, Mr. Davis chose to appeal his
19 termination to the personnel review board, correct?

20 A. Yes, sir.

21 Q. But it's your understanding, sir, is it not, that in the
22 absence of an appeal, Mr. Roberts' decision that the employee
23 was terminated is final, correct?

24 A. Say that again?

25 Q. Sure. An employee receives a notice, an end of employment

1 form, saying that he's terminated. If that employee doesn't
2 file an appeal, he's still terminated, correct?

3 A. That's correct.

4 Q. All right. Because Mr. Roberts has the authority and has
5 exercised the authority to terminate, correct?

6 A. That's correct.

7 Q. Now, while we're still on these exhibits, let's look at
8 Exhibit #21 for a moment. And this is details of merit system
9 violation dated April 20, 2006, correct?

10 A. Yes, sir.

11 Q. And on this document, your signature appears on the second
12 page of the document?

13 A. Yes, sir.

14 Q. Okay. And -- now, this document, from your perspective, had
15 the city manager approved the termination by the time this
16 document was presented to the employee?

17 A. This was the write-up. I --

18 Q. Maybe I can ask the question differently. Isn't it true
19 that this document was provided to Mr. Davis at the meeting when
20 he was informed that he was terminated?

21 A. That's correct.

22 Q. So the city manager had already approved it by the time this
23 document was presented to the employee?

24 A. That is correct. Yes, sir.

25 Q. Okay. So he was terminated at that point.

1 A. Yes, sir.

2 Q. Okay. On the second page, right above the supervisor's
3 signature, there's some language there. Would you read that
4 language, please, to the jury?

5 A. On the second page?

6 Q. Right.

7 A. This written warning is intended to give an opportunity to
8 correct your work performance and conduct in the future.
9 Failure to do so would subject you to further corrective action,
10 as stated in the merit system rules and regulations, and could
11 result in your dismissal from employment with the City of Phenix
12 City.

13 Q. Okay. Now, this document is not intended to give Mr. Davis
14 an opportunity to correct his performance and conduct at the
15 department in the future, was it? This document was to inform
16 him that he was terminated.

17 A. It's a written warning form.

18 Q. Okay. So this is an actual form that just gets filled out
19 or typed in.

20 A. Yes, sir.

21 Q. Okay. So the areas that need to be filled out on the form,
22 that's just a standard that the personnel department has, and
23 then it's completed and given to the employee as -- well, it
24 says a written warning --

25 A. Yes, sir.

1 Q. -- but in Mr. Davis's case, it was actually given to him as
2 a notice of termination?

3 A. If it was your first time given one, it wouldn't be a
4 termination form.

5 Q. That wasn't my question, sir.

6 A. Okay.

7 Q. My question is in this case with this exhibit when it was
8 given to Mr. Davis, it wasn't a written warning. It was a
9 notice that he had been fired; is that correct?

10 A. That's correct.

11 Q. Now, sticking with this document for a moment, after the
12 boxes were filled in on this form, standard form -- and there's
13 language here that says discharge as per merit system rules and
14 regulations for second group II offense. Discharge as per merit
15 system rules and regulations for first group III offense.

16 Do you see that language?

17 A. Yes, sir.

18 Q. Now, the way this is written, sir, it looks as if, to me,
19 you were saying that there were two independent bases upon which
20 the plaintiff was terminated, that he was discharged for a
21 second group II offense and he was also discharged for a first
22 group III offense. Is that fair?

23 A. That's correct.

24 Q. Okay. Now, sir, the action taken by Mr. Davis that was
25 determined and resulted in the second group II offense, that

1 action was contacting the mayor, correct?

2 A. That was part of it. Yes, sir.

3 Q. Okay. And the action which constituted the first group III
4 offense that Mr. Davis took that resulted in his termination was
5 his contacting of the mayor, correct?

6 A. That's correct.

7 Q. Just so there's no confusion on this, on April 16th of 2005,
8 Mr. Davis was employed as a driver engineer, a sergeant in your
9 department?

10 A. Yes, sir.

11 Q. And he was an employee in good standing, correct? He was
12 not on probation or anything like that? He was a full-fledged
13 employee of your department.

14 A. That's correct.

15 Q. And then on April 17th, 2005, he made a phone call to Mayor
16 Hardin, correct?

17 A. That's correct.

18 Q. And on April 21st, 2005, he was terminated. Is that also
19 correct?

20 A. That's correct.

21 Q. And according to your testimony this morning and according
22 to the document here, but for his call to the mayor, Mr. Davis
23 wouldn't have been disciplined at all on the 21st of April,
24 2005, correct?

25 A. On the 21st?

1 Q. Right.

2 A. State that again, sir.

3 Q. Okay. You'll agree with me -- and for the date -- I'll show
4 you where I'm getting the date from. That may help you here.

5 A. Yes.

6 Q. If you look at Exhibit #21, the date at the top says April
7 20, 2006. But if you turn to the second page where your
8 signature appears and the other signatures appear --

9 A. Yes, sir.

10 Q. -- it indicates that this was signed by those individuals on
11 April 21st, 2006.

12 A. Yes, sir.

13 Q. Does that refresh your memory that it was actually April
14 21st, 2006, when Mr. Davis was terminated?

15 A. Yes. All this shows is that Chief Waters prepared this
16 written warning on the 20th, and everybody -- the meeting was on
17 the 21st where these signatures were signed.

18 Q. Right. Right.

19 A. Yes, sir.

20 Q. And my question to you was just to confirm that according to
21 your testimony already today and according to the documents, if
22 David Davis had not called the mayor on April 17th, he would not
23 have been at the personnel office receiving a termination notice
24 on April 21st.

25 A. That's correct.

1 Q. Now, Chief, earlier you made reference to the grievance
2 procedure. Do you recall that?

3 A. I believe so.

4 Q. Okay. Is it your position that if Mr. Davis had a concern
5 relating to the proposed ordinance, that he should have filed a
6 grievance?

7 A. That's a -- that's his choice. He could have filed a
8 grievance. He could have come to me. He could have done -- he
9 could have followed his chain. That's a choice that Sergeant
10 Davis had to make. I can't say what he should have or shouldn't
11 have done. It would have been much easier if he would have
12 given us a chance to take care of any concerns that he had,
13 because I definitely would have tried to, and I would have.

14 Q. Okay. So is it or is it not your view that he should have
15 filed a grievance before going to -- speaking with the mayor on
16 this issue?

17 A. I -- I would have preferred the easier route, but it was his
18 choice. I would have preferred that. You know, if he would
19 have -- he didn't have to file a grievance. All he had to do
20 was come talk to Chief Waters. I had put a man down there,
21 Chief Waters, Deputy Chief Waters. If they didn't want to come
22 to me, that they can go to a 33-year veteran that was the chief
23 of a former department I had just brought over there to make
24 sure that we can have good, workable solutions to everything.
25 It would have been much easier if he would have took that route.

1 Q. So now you're saying -- before, as I understood your
2 testimony, an employee would have to go through each step of the
3 chain of command to you, as the department head, correct?

4 A. That's what I just said.

5 Q. Okay. So you didn't just say that instead, they could --

6 A. He could --

7 Q. -- go to Chief Waters?

8 A. I said follow the chain of command. Chief Waters -- see,
9 the chain of command allows for a lot of problems to be solved.
10 I've been in this 22 years. A lot of times, you can start at
11 one step, and it's taken care of there. It never reaches any
12 type of argument. You never know what a person can have laying
13 on their desk to solve your problem if you have something that
14 you don't like. You can come -- you may walk in to -- make it
15 up the chain to the captain's office, and there may be a memo in
16 there that's taking care of all your concerns. Anything that
17 you want done is there. We've solved many problems through that
18 way.

19 Q. Okay. So problems can be resolved before they reach your
20 level.

21 A. Yes, sir. You never know what's there. It's taken care
22 of. You know, we try to solve problems at the lowest rank.
23 That's why we have the rank structure and the supervision that
24 we have.

25 Q. Okay. And Mr. Davis, on April 16th, 2006 -- actually, and

1 all of April prior to his termination -- he was a sergeant
2 within the department, correct?

3 A. That's correct.

4 Q. He worked 24-hour shifts, correct?

5 A. That's correct.

6 Q. And Captain Bennett was above Sergeant Davis in the chain of
7 command?

8 A. That's correct.

9 Q. And at times, Captain Bennett would have been Sergeant
10 Davis's first-line supervisor?

11 A. That's correct.

12 Q. So under your explanation -- and I appreciate it -- of the
13 chain of command, it's your view that if Mr. Davis had a
14 problem, he'd start up the chain of command. And maybe it gets
15 solved by the captain. And if not, maybe it gets solved
16 somewhere up. But if it -- if it can be solved at the captain
17 level, that's preferable than having to keep elevating it. Is
18 that essentially your testimony?

19 A. If that particular supervisor at that level have the
20 authority to solve that. Because what that supervisor would do,
21 if they couldn't take care of it, is pass it to their
22 supervisor.

23 Q. Okay.

24 A. With the authority at that level to solve it.

25 Q. Okay. And who do you contend has the responsibility to take

1 it to the next level? Because as I understood your testimony,
2 you said that if one level of supervision is given a problem and
3 they don't have the authority to adjust it, the supervisor
4 should bring it to the next level?

5 A. That's if that person requests of that supervisor. The
6 person has to request of that supervisor that they want to move
7 on in the chain of command. That is -- then that supervisor is
8 to move that to that next level. That's their responsibility to
9 move it for that employee if that's what the employee requests
10 of them. It's simple.

11 Q. It's simple. That's an interesting way of putting it,
12 Chief. It's simple. According to what you just told us, an
13 employee goes to their first-level supervisor with a problem.
14 The first-level supervisor gives the employee an answer that the
15 employee is satisfied with. What you told me is nevertheless,
16 even though he's satisfied with what his first-line supervisor
17 told him, somehow the employee has to know whether or not that
18 first-line supervisor really had the authority to say what he
19 said. And then after the employee figures out whether the
20 first-line supervisor really had the authority, then the
21 employee has to ask the first-line supervisor to move it up the
22 chain of command. Is that what you're saying?

23 A. That's correct. It depends on what it's addressing. If
24 it's addressing -- we have standard operating procedures in
25 place as a guideline for everybody to follow. And we have very

1 intelligent people there that can follow these things if they
2 want to follow them.

3 Q. I'm sure you do, Chief. So the very simple process, in your
4 view, is that an employee goes to a first-line supervisor, gets
5 an answer that the employee is absolutely satisfied with, happy
6 as can be, but your testimony is that employee has to do
7 something else. That employee has to figure out whether that
8 supervisor really had the authority to say what he said. And
9 then if the employee figures out that that supervisor did not
10 have the authority, then the employee asks the supervisor to
11 elevate it.

12 A. Sir, that is not what I said. I said if that supervisor has
13 the authority at that level. And that's why we give individual
14 standard operating procedures out. Firefighters know whether a
15 person is giving them the right advice or not, but it has to be
16 requested to be moved up the chain.

17 Q. So --

18 A. That's what you -- going through the chain of command is.

19 Q. That's what going through the chain of command is.

20 A. Yes, sir.

21 Q. So your testimony, going through the chain of command is
22 that an employee starts at the first-line supervisor. And the
23 first-line supervisor can give him an answer and does so, and
24 the employee is happy with that answer. Nevertheless, the
25 employee has to figure out if that supervisor had authority to

1 give the answer and then, if not, ask the supervisor to take it
2 to the next level? That's the responsibility of the employee
3 and not the supervisor?

4 A. No, sir. That's why we give out standard operating
5 procedure books. Employees doesn't have to figure that out.
6 Request a vacation, things that person -- they know the
7 procedures of it, and they take care of it and ask the captain
8 where they want to take a particular day off. That captain
9 checks with the assistant chief and makes sure it's clear on the
10 board and we don't have too many people off, and it's taken care
11 of.

12 Q. Okay.

13 A. You know, if it's something in the matter of what we're
14 talking about addressing, it's right here in the book. Standard
15 operating procedure would be there for a person if that person
16 know -- if that's the request that they put in to the
17 supervisor, to move on with something. If they don't request
18 that -- and there's certain things that our employees know that
19 supervisors can't give them authority to do.

20 Q. So it's not up to the supervisor or the supervisor's
21 responsibility to know whether or not he had the authority to
22 give the answer that he gave?

23 A. Repeat that, sir?

24 Q. So is it your testimony that it's not the obligation of the
25 supervisor to know whether the supervisor had authority to give

1 the answer that he gave?

2 A. The supervisors are trained on knowing what answers to give
3 or they find out an answer. They should tell that employee, if
4 they don't have an answer for that employee, I'll get back with
5 you with an answer. And they go get the answer and give it to
6 them if it's a request for an answer.

7 Q. Okay. Let me try this one more time, Chief.

8 A. Yes, sir.

9 Q. And if I'm being unclear, please let me know. An employee
10 has a problem, a concern, an issue that he needs an answer to.
11 And the employee is a rank-and-file firefighter on duty at the
12 station with a commander in charge of his particular station.
13 All right?

14 A. That's correct.

15 Q. All right. The employee goes to the captain and asks the
16 captain the question that he has. Whatever the issue is, he
17 asks his captain, because his captain is the first-line
18 supervisor, okay?

19 A. That's correct.

20 Q. All right. And the captain gives the employee an answer
21 that the employee thinks, okay, that answer is fine. Whether he
22 likes it or doesn't like it, the employee is satisfied with the
23 answer that the captain gives. Okay? Under that scenario, the
24 employee doesn't have any obligation to go beyond the captain or
25 request that the captain take it above his level, does he?

1 A. If it's a request to see somebody above that captain, yes,
2 that employee does. That employee gets an answer back from that
3 captain that they have a meeting with the person above them, and
4 now they can go that step above. That --

5 Q. Sir -- sir --

6 A. -- supervisor have to come back to him. That's what the
7 chain is, sir.

8 Q. My question to you wasn't what happens if an employee goes
9 to their captain and says I want to speak to somebody above
10 you. That wasn't my question. My question is very simple, very
11 direct. As -- and I want your answer as chief of the
12 department. I think you gave it to me, but I want to have it
13 clear.

14 An employee of the fire department has a problem, has a
15 question. They go to their supervisor. The supervisor answers
16 that question. The employee thinks the answer is just great, is
17 completely satisfied. Does that employee have any obligation to
18 then go above that supervisor?

19 A. It depends on what the situation is. It depends on what the
20 request is, sir.

21 Q. So sometimes it's your view that the lower ranking employee
22 who asks a question and gets an answer from his supervisor --
23 somehow that lower ranking employee is the one that has to know
24 that the supervisor gave an answer that he or she was not
25 entitled to give or didn't have the authority to give. And then

1 they have to tell their supervisor, hey, Captain, I don't think
2 you have the authority to tell me what you just told me -- it
3 sounds insubordinate, but under your theory, that's what they
4 do -- and then the employee, not the captain, but the employee,
5 has to ask the captain to go higher on the chain of command.

6 A. Sir, it depends on what the request -- there's a difference
7 in a request for a vacation day and a request to address the
8 council. It's a different -- it's a different guideline on
9 that.

10 Q. The difference --

11 A. We have different guidelines.

12 Q. The difference, sir, from your perspective is that there's
13 certain things that the captain has the authority to decide and
14 there's certain things that the captain does not have the
15 authority to decide.

16 A. That is correct.

17 Q. Okay. And it's also your testimony here today that it's up
18 to the employee who asks the question to know whether or not his
19 captain has the authority to answer that question. Is that
20 correct?

21 A. I didn't say it was up to them. The majority of the time,
22 with having the standard operating procedures available, the
23 employee knows their rights and they know what that supervisor
24 should be telling them and what they shouldn't. That's why they
25 make the request.

1 Q. So it's up -- it's up to the employee to -- when they
2 receive an answer from their supervisor to know whether or not
3 the supervisor had the authority to give that answer? That's
4 your testimony?

5 A. Like I say, it depends on the request.

6 Q. So under the chain of command in the City of Phenix City
7 Fire Department, you have this important rank structure. And
8 the employee goes to the supervisor and he gets an answer that
9 he's satisfied with. It's not the supervisor's obligation to
10 know whether or not I have authority to give that answer or
11 whether I have to seek someone else's approval. It's the
12 rank-and-file employee's obligation to know that.

13 A. No, sir. They know -- they follow standard operating
14 procedures. 99.90 percent of the time, it's followed. So I
15 would have to stick with my answer on that, because I see it
16 followed every day.

17 THE COURT: Mr. Steele, let's move on.

18 MR. STEELE: Okay.

19 Q. Now, moving back -- I guess we haven't really left it -- the
20 issue that Mr. Davis spoke to Mayor Hardin about, your
21 understanding and my understanding -- we'll see if it's the
22 same -- but he spoke to Mayor Hardin about a proposed ordinance
23 that would affect the probationary period for the police, the
24 fire, and the code enforcement departments. Is that fair?

25 A. That's fair.

1 Q. At the time that Mr. Davis spoke to the mayor, that
2 procedure was not yet in place because the city council had not
3 approved it, correct?

4 A. That's correct.

5 Q. In fact, the city council did approve it, but they approved
6 it the very next morning. Is that your understanding?

7 A. It might have been. I believe so.

8 Q. Okay. So at the time Mr. Davis spoke to the mayor, who's an
9 elected official and, as he so correctly pointed out, a
10 politician, he spoke to the politician who, as part of his
11 duties, had within his authority to vote yes or no on that
12 proposal, correct?

13 A. That's correct.

14 Q. And as far as you know -- and you can't disagree, I don't
15 believe, with this -- that call happened on a day when Mr. Davis
16 was off duty. Is that correct?

17 A. That's correct.

18 Q. Now, in Phenix City, in addition to whatever department
19 rules you have, you've got merit system rules and regulations;
20 is that correct?

21 A. That is correct, sir.

22 Q. And the merit system rules and regulations, that's something
23 that actually the city council puts in place, correct?

24 A. That's correct.

25 Q. Okay. And the chain of authority -- let me get away from

1 the word "chain of command," because I think you're going to
2 argue with me about that on this question. But the chain of
3 authority in Phenix City is that you have department heads; and
4 above department heads, you have the city manager; and the city
5 manager is hired and can be fired by the city council.

6 Correct? That's -- that's the chain of authority in the
7 government in Phenix City, correct?

8 A. That's -- that's correct.

9 Q. So if the city council does something, that's at a level
10 above what you can do as department head.

11 A. Yes, sir.

12 Q. Nevertheless, the City of Phenix City merit system rules and
13 regulations apply to employees of the fire department in
14 addition to the other city employees that are part of the merit
15 system.

16 A. That's correct.

17 Q. So they govern the employees in your department. Is that
18 fair?

19 A. That's fair.

20 Q. And if you would, please, turn to Exhibit #3, Plaintiff's
21 Exhibit #3 in the binder in front of you. And sir, I'm going to
22 assert that Plaintiff's Exhibit #3 is a copy of a City of Phenix
23 City merit system rules and regulations. I'm not going to ask
24 you to read through the whole thing to tell me if you agree.

25 MR. STEELE: But Your Honor, this document has been

1 stipulated to, and I would move for its admission.

2 THE COURT: It's admitted.

3 MR. STEELE: Thank you.

4 Q. Now, if you would, sir, turn for me to Section 1.09 of the
5 merit system rules. I wish I could give you a page number; but
6 at least on my copy, there's not a page number. But it's 1.09,
7 Responsibilities of Merit System Employees. It's near the
8 front.

9 MR. MCKOON: It's on page 8.

10 MR. STEELE: Oh, okay. On my copy the 8 is cut off. I
11 don't know; the chief's copy may be better than the one I have.

12 A. Yes.

13 Q. Okay. Now, Section 1.09 of the merit system is entitled
14 Responsibilities of Merit System Employees. Am I correct that
15 Mr. Davis was a merit system employee?

16 A. That's correct.

17 Q. So this merit system rule would apply to him?

18 A. Yes, sir.

19 Q. Okay. And under 1.091, there's a title, Political Activity.

20 A. Yes.

21 Q. And if you would, turn to 1.091 B, okay?

22 A. Yes, sir.

23 Q. Now, 1.091 B states that no person holding a position in the
24 city service shall take part in the management, affairs, or
25 political campaign of any candidate for any political office

1 during his/her working hours, correct?

2 A. That's correct.

3 Q. So -- but -- and you know this for a fact. Employees of
4 city service are not prohibited from taking part in the
5 management, affairs, or political campaign of any candidate for
6 political office when they're on their nonworking hours, when
7 they're off duty, correct?

8 A. That's correct.

9 Q. And subpart C of 1.091, sir, reads that no employee, comma,
10 official, or person shall solicit during employee hours any
11 assessments, contributions, or services for any political party.

12 Do you see where it says that?

13 A. Yes, sir.

14 Q. Now, this rule does not prohibit an employee of the city on
15 their off-duty hours from collecting a contribution or funds in
16 support of a political party, correct?

17 A. That's correct.

18 Q. So this provision on political activity does draw a pretty
19 clear line between on duty, where the employee is strictly
20 limited in what they do with respect to political activity, and
21 off duty, when these restrictions are not in place, right?

22 A. Yes, sir.

23 MR. STEELE: Thank you. Thank you, Chief.

24 MR. GRAHAM: Your Honor, if it please the Court.

25 THE COURT: Is that all, Mr. Steele?

1 MR. STEELE: Yes, Your Honor.

2 MR. GRAHAM: Your Honor, if it please the Court, I'm
3 going to do the direct on the chief, but I need a break for a
4 minute.

5 THE COURT: Well, we'll do that.

6 All right. Members of the jury, we're going to take a
7 15-minute recess. Please go outside if you like. Don't talk
8 about the case.

9 Excuse me, gentlemen. I'm not through.

10 We're going to have a recess. I'll remind you not to
11 discuss the case with anybody. Be back in the jury room and
12 ready to start back at 15 minutes till eleven.

13 (Jury out at 10:28 a.m.)

14 THE COURT: Court is in recess.

15 (Recess at 10:28 a.m. until 10:46 a.m., at which time
16 proceedings reconvened with the jury present, as follows:)

17 THE CLERK: Court is in session. You may be seated.

18 THE COURT: All right. Mr. Graham.

19 CROSS-EXAMINATION

20 BY MR. GRAHAM:

21 Q. Chief Hunter, I would draw your attention back to 1.09 of
22 the merit system rules and regulations that Mr. Steele spoke
23 with you about earlier.

24 A. Yes, sir.

25 Q. And I believe he went through those with you. And it

1 explicitly says in this particular merit system rule that you're
2 not allowed to do it while you're on duty, perform these
3 particular actions, but when you're off duty, it's acceptable
4 to.

5 A. Yes, sir.

6 Q. Does this part of the merit system apply to ASOP 12?

7 A. No, sir.

8 Q. All right. And ASOP 12 does not speak to whether you can do
9 it on duty or off duty. What is your interpretation of ASOP 12?

10 A. The guidelines follow you every day. If you're a
11 firefighter or you work for the city and you work for the fire
12 department, you fall up under ASOP 12.

13 Q. Is that on duty or off duty?

14 A. That's on or off duty.

15 Q. And if it was intended only to be on duty, it would speak to
16 that; is that correct?

17 A. That's correct.

18 Q. Now, let me move to your deposition. Mr. Steele asked you a
19 question in your second deposition. Do you still have a copy of
20 your second deposition up there?

21 A. Yes. Yes, sir.

22 Q. Okay. And he went to page 12.

23 A. Okay. Yes, sir.

24 Q. Are you at page 12?

25 A. Yes, sir.

1 Q. Now, let me ask you this. I want you to go back to page 11,
2 line 22, where Mr. Woodley asked you this question: Okay.
3 Where I'm trying to go with this, just so you understand, is
4 that is there a preliminary requirement that before a city
5 employee can talk to the media about any city-related issue,
6 that individual employee has to exhaust the grievance procedure
7 provided by the city?

8 And what was your answer?

9 A. No.

10 Q. And what was the rest of the answer?

11 A. We have designated people to talk to the media.

12 Q. Okay. And question: And who would that be?

13 A. Myself and whoever I elect designated as the person in fire
14 prevention or whichever division that they are requesting the
15 information from.

16 Q. Question: So you consider yourself a spokesman for the fire
17 department to the media?

18 A. Yes, sir.

19 Q. Question: Okay.

20 What was your answer?

21 A. I am -- I am one of them.

22 Q. Question: You are one of them? And you have, as you
23 understand it, the authority to designate another individual in
24 the fire department to speak with the media, correct?

25 A. That is correct.

1 Q. Question: Does anyone else in the fire department have the
2 discretion or opportunity to speak to the media without your
3 prior approval on any issues affecting the fire department?

4 A. As far as the media?

5 Q. What was your answer?

6 A. No, sir. We have designated personnel for that. As far as
7 I'm -- as far as if I'm not here, in my absence someone would
8 step in place and that person would have the authority.

9 Q. Question: Who would be the next person, if you are absent,
10 to speak with the media about a fire?

11 A. Presently, that person would be Deputy Chief Hanson.

12 Q. All right. Now, this whole series of questions -- or the
13 questions that Mr. Steele asked you was part of a series of
14 questions.

15 A. That's correct.

16 Q. And it was cleared up by Mr. Woodley over here that you
17 would be talking about fire, which would be a fire that had
18 happened in the city of Phenix City; is that correct?

19 A. That's correct. Yes, sir.

20 Q. That's not about going to the news media with anything.

21 A. No, sir.

22 Q. All right. Now, go back to your first deposition, and go to
23 page 120. I believe it's 120. No, I'm sorry. It's 102.

24 Are you there? Okay. And Mr. Woodley had been asking you a
25 number of questions about speaking to the media and

1 constitutional rights and that type of thing in the previous
2 pages.

3 A. Yes, sir.

4 Q. And then on my examination of you on line 14 -- so on line
5 14, I said: Let me just ask you one question to clarify
6 something. Now, you do recognize that a firefighter has the
7 right under the U.S. Constitution to free speech.

8 And what was your answer?

9 A. That's right.

10 Q. And that free speech is allowed if you follow the procedures
11 that are set out in the ASOPs and the merit system of the City
12 of Phenix City.

13 A. That's correct.

14 Q. All right. And that was the first deposition that was ever
15 taken in this case of yours; is that correct?

16 A. Yes, sir.

17 Q. Now, did Mr. Woodley ask you any questions after that?

18 A. No, sir.

19 Q. So he had no more questions.

20 A. He said: I don't --

21 Q. He didn't argue that point with you; is that correct?

22 A. He said -- I said: That's correct. He said -- Mr. Woodley
23 said: I don't have anything further. Thanks, Chief. I
24 appreciate your coming.

25 Q. Okay. Now, I know that when Mr. Steele initially called

1 you, he did a little bit of background work on you.

2 MR. GRAHAM: And Judge, I'm going to try not to repeat
3 any of those questions, but there are a couple of other things
4 that I'd like to ask the chief about that.

5 Q. All right. Chief, when you were hired by the Phenix City
6 Fire Department, what was your entry-level position?

7 A. Recruit firefighter.

8 Q. All right. So you didn't transfer in from another
9 department and already held a rank higher than just plain
10 firefighter.

11 A. No, sir. I was recruited in by the personnel director and
12 city manager.

13 Q. All right. And at any point in time in your career, were
14 you affiliated with the International Association of
15 Firefighters?

16 A. Yes, sir.

17 Q. Was that the local association here?

18 A. Yes. That's the local.

19 MR. STEELE: Objection. Relevance.

20 THE COURT: What is the relevance to that?

21 MR. GRAHAM: Judge, the relevance is they talked about
22 the union. They talked about David as a union member going and
23 lobbying his legislative body, so to speak. And I think we've
24 got the right to see if that ever occurred by anyone else.

25 THE COURT: If what ever occurred by anyone else?

1 MR. GRAHAM: Lobbying the legislative body of the city.

2 MR. STEELE: Sir, if I may.

3 THE COURT: I don't understand the relevance of that.
4 I sustain that.

5 MR. GRAHAM: All right. That's fine, Judge. That's
6 fine.

7 Q. All right. Take us through your career, then, Chief Hunter,
8 and tell us when you came in as -- at the bottom level as a
9 firefighter and approximately when you achieved each promotion
10 up to fire chief.

11 A. I was recruited in 1985. I was in school trying to obtain
12 my fire science degree. I started in 1986 as a recruit
13 firefighter. I served as a firefighter for three years until
14 1989, which I became a driver engineer/sergeant. I was promoted
15 to that rank in '89. I served as a driver engineer until 1994,
16 which I was promoted to a captain. In 1994 till 1998, in March,
17 I served as a captain, and I was promoted to assistant chief. I
18 served as an assistant chief until 2001 and -- which I became
19 acting chief. And I served there for two months, and I became
20 the chief of the department.

21 We had a bunch of turmoil going on in the department. We
22 had a lot of threats going on at the time. Some people didn't
23 want me to be the fire chief. And it weighed heavily on my
24 family, and I was -- it was requested to me by my parents and
25 asked me would I resign. So I didn't feel my family needed to

1 go through that, so I resigned as the fire chief.

2 And we had a turnover in government, and we had a new
3 government to come in. And City Manager Roberts took over at
4 that time, and he told me I would stay as acting chief until he
5 found another chief. And I served as fire chief until December
6 of 2001, which our former fire chief, Chief Prater, returned.

7 When Chief Prater returned, he didn't want me to go back
8 onto the line. I wanted to go back as assistant chief; but he
9 put me as assistant chief over operations and I worked in the
10 office with him, basically, with him. I had an office in
11 station one. I served under -- me and Chief Prater worked
12 together real well for the next three years. And in 2005, he
13 informed us, he and the city manager, that he was going to
14 leave. And when he left, I was placed in as interim fire chief
15 in March of 2005. And I served in that capacity until May of
16 2005, and which I was appointed the fire chief again.

17 Q. Okay. And when you became the fire chief for the second
18 time, what was the state of the fire department?

19 MR. STEELE: Objection. Beyond the scope of direct.

20 MR. GRAHAM: Judge, they've introduced this
21 "Three-Alarm Turmoil" newspaper article and -- with their
22 witnesses yesterday. And the chief had only been the fire chief
23 less than a year when that occurred.

24 MR. STEELE: Your Honor --

25 MR. GRAHAM: And I think we've got a right to get into

1 it.

2 MR. STEELE: Your Honor, I also object to Mr. Graham
3 testifying to the jury, and I think that explanation constituted
4 that. I did not ask this witness anything other than
5 identifying that article, and I asked him about his photo. I
6 didn't ask him one word about the contents of that article.

7 THE COURT: Well, I'm going to give a little bit of --
8 I think it would be relevant to you calling him as your own
9 witness. So I'll give a little latitude so that you won't have
10 to recall him, but this will have to be brief.

11 MR. GRAHAM: Yes, sir.

12 THE COURT: We're not going to go into a lot of detail.

13 MR. GRAHAM: Yes, sir.

14 Q. (Mr. Graham, continuing:) What was the state of the fire
15 department when you became chief the second time?

16 A. Well, we had some problems. We had quite a few problems
17 when I took over as fire chief. And I had to go -- go to work
18 right away with a plan trying to make everything -- get people
19 to work together and work with one another and create an
20 atmosphere that it wasn't a divided department, that it was a
21 whole department, that it didn't have certain individuals that
22 are cared about or we worked with, but we worked all together.
23 And --

24 Q. All right. Now, let me ask you this. At what point in time
25 did you bring Roy Waters in as your deputy chief?

1 MR. STEELE: Objection, Your Honor. Relevance. This
2 is completely beyond anything that I asked in direct.

3 THE COURT: It is beyond --

4 MR. STEELE: Chief Waters is on the list.

5 THE COURT: It is beyond the direct, but I think it's
6 relevant. I'll allow him to go into that.

7 MR. GRAHAM: Thank you, Judge.

8 A. Chief Waters became a part of my plan. Chief Waters had
9 been our fire science instructor at Chattahoochee Valley. I had
10 to put together a plan to get people to work together. I felt
11 like I might be too close to everyone there. I mean I had been
12 there at the time 20 years; you know, and people have problems
13 with one another. So I needed to place someone in between
14 myself and the operations of the day-to-day operations.

15 So Chief Waters was anticipating retiring from the Columbus
16 Fire Department. And we had always been good friends, and we
17 had always had a great relationship because we don't agree on
18 everything. And that's what I like about him, a person that you
19 can work with real good on that and agree to disagree. So I
20 brought -- talked to Chief Waters, and he made plans to retire.
21 And when Chief Waters retired, he took -- retired, he took four
22 weeks off as vacation, and he joined the Phenix City Fire
23 Department. So it was -- it was basically seven months after I
24 became the chief that I brought him on.

25 Q. All right. And this all --

1 MR. STEELE: Objection, Your Honor. I'd like to have
2 that answer stricken from the record on the basis of relevancy.

3 THE COURT: Overruled.

4 Q. The "Three-Alarm Turmoil" article that has been introduced
5 into evidence, did any of the people that were interviewed in
6 that ever come to you with that list of grievances after you
7 became fire chief?

8 A. No, sir.

9 MR. STEELE: Objection.

10 A. No, sir.

11 MR. STEELE: Beyond the scope of direct.

12 THE COURT: I think that's within the scope. You've
13 gone into things that happened there and what the chain of
14 command was and who should do what under what circumstances.
15 Overruled.

16 Q. Well, let's move on to something else, Chief.

17 A. Yes.

18 Q. Does the Phenix City Fire Department have a chain of
19 command?

20 A. Yes, sir.

21 Q. And I think probably everybody knows; but for those that
22 don't know, tell us what a chain of command is.

23 A. Chain of command is a structured rank of order. It starts
24 from the chief to the deputy chief to the assistant battalion
25 chiefs. Battalion chiefs run stations. We have them out --

1 that's who run the day-to-day operations. We have three shifts,
2 A shift, B shift, and C shift. Battalion chiefs are there.
3 Under those battalion chiefs are captains that supervise each
4 station that we have.

5 At each station so far, we have -- we're discussing a
6 station four -- we have two drivers under those captains. Under
7 those captains, we have station one where you have your most
8 firefighters. Most of the days, we have four firefighters
9 there. Station three, we have two firefighters under that
10 sergeant. So it's a structured rank of order that's -- that
11 they follow in progression of rank and -- and as far as taking
12 out day-to-day operations and being supervisor.

13 Q. All right. Within the confines of the fire department
14 itself, you're the top level in the chain of command.

15 A. Yes, sir.

16 Q. And then if any problem that a firefighter has within the
17 department and you can't satisfy that problem or that grievance,
18 then where would it go?

19 A. I take it up to the city manager.

20 Q. Okay. And ASOP 12 addresses that; is that correct?

21 A. Yes, sir. It has -- that's correct.

22 Q. All right. Now, why -- why is a chain of command important
23 in a paramilitary organization?

24 A. It's very important because if you can't -- you don't follow
25 the chain of command or follow orders as far as on fire ground

1 operations or day-to-day operations, people can get killed.

2 People can be misinformed.

3 Q. Okay. And why is it important when you're at the scene of a
4 fire for the chain of command to be followed?

5 A. Because it flows information. Information is disseminated
6 from one rank to the next to make sure the operation runs
7 smoothly.

8 Q. Well, let me ask you that, then. Conversely, why is it
9 important -- a chain of command important when you're not at the
10 scene of a fire or other emergency?

11 A. So the information is disseminated and everything is run --
12 run -- it will make everything run smoother during the day and
13 we won't have any problems. We can handle all problems there,
14 and you're informed from the top to the bottom and from the
15 bottom to the top.

16 Q. Okay. And when -- all right. I'm sorry. And when you were
17 hired at a bottom-level firefighter, when a firefighter is off
18 duty, does that mean he doesn't have to stay in his chain of
19 command --

20 MR. STEELE: Your Honor --

21 Q. -- to deal with fire department issues or questions?

22 MR. STEELE: Your Honor, objection to the time frame.
23 When the chief was hired as a firefighter was far before any of
24 the events that are relevant to this case.

25 THE COURT: Well, restrict your question to a time.

1 When.

2 MR. GRAHAM: That's okay, Judge. I'll --

3 Q. Since ASOP 12 has been in effect, is it your opinion that a
4 firefighter, if he's off duty, he doesn't have to stay within
5 the chain of command to talk about work-related problems?

6 A. You always follow ASOP 12.

7 Q. Whether you're on duty or off duty?

8 A. Whether you're on duty or whether you're off duty.

9 Q. All right. And does the fire department have standard
10 operating procedures? Which I think everybody knows. And ASOP
11 12 is just one of those; is that correct?

12 A. That's correct. It's just one that we have to follow.

13 Q. And when you have a person hired, are they required to be
14 familiar with the ASOPs and the merit system?

15 A. That's correct. We give them a merit system book and we
16 also give them a standard operating procedure book. And that's
17 part of your probationary period. When you're in there, you're
18 studying these guidelines. And you have a tremendous amount of
19 time to study them and learn them.

20 Q. All right. And so each individual fire person is issued a
21 set of the merit system rules and regulations and administrative
22 SOPs?

23 A. They have a brief portion of the merit system. We have a
24 more extended version at the stations. But SOP, everybody has
25 their own individual guideline, because those are the guidelines

1 specifically for the fire department. So everybody has them so
2 they're accessible to you in your lockers. They keep them in
3 their lockers. Some people take them home and study them. It's
4 a good guide to know those. It helps you in your promotions,
5 also.

6 Q. All right. And would you explain to the Court and the
7 ladies and gentlemen of the jury what would happen if a
8 firefighter is permitted to ignore the standard operating
9 procedures of the department?

10 A. It would disrupt --

11 MR. STEELE: Objection. Hypothetical. There's no
12 factual situation asked to give comments on. And beyond the
13 scope of direct.

14 THE COURT: Well, that is a hypothetical, and I'll
15 sustain as to the language. I'll let you ask why is it
16 important that they not do that.

17 MR. GRAHAM: All right.

18 Q. Why are standard operating procedures, such as ASOP 12,
19 important?

20 A. They're very important for everyone to follow so we keep an
21 orderly day-to-day operation going. And if you're allowed to
22 violate them, that should give everybody the right to do the
23 same thing. And we wouldn't have any -- any type of guidance as
24 a guideline.

25 Q. And would that be the same with the chain of command?

1 A. That's correct.

2 Q. To your knowledge, and just your knowledge, does the City of
3 Phenix City Fire Department ever prevent its employees from
4 speaking out about anything?

5 A. No, sir.

6 Q. Is it true that a Phenix City firefighter can speak to
7 anyone he wants to about anything he wants to speak about?

8 A. That's correct. He should follow ASOP 12. He can speak to
9 anyone he wanted to.

10 Q. Does that include the mayor?

11 A. That includes the mayor, which is a council member.

12 Q. Does that include the city council?

13 A. That includes the council. Yes, sir.

14 Q. And as you said in your deposition that we read earlier,
15 does that include the newspaper?

16 A. Yes, sir.

17 Q. Now, what about work-related matters? Can firefighters in
18 Phenix City speak about work-related matters directly to the
19 media --

20 A. Not --

21 Q. -- the mayor, or city council without going through the
22 chain of command?

23 A. No. They should follow ASOP 12.

24 Q. But once they've done that, then they could speak to --

25 A. They could speak to anyone they wanted to speak to.

1 Q. Did David Davis comply with the requirements of ASOP number
2 12 before he called Mayor Hardin about the proposal to change
3 the probationary period?

4 A. No, sir.

5 Q. Did he come to you about that?

6 A. No, sir.

7 Q. You've touched on this next question, but why does it hurt
8 the fire department for David not to follow the SOP number 12?

9 MR. STEELE: Objection. Asked and answered.

10 THE COURT: Well, he hasn't asked him about Mr. Davis's
11 particular actions.

12 I understand that's what you're asking?

13 MR. GRAHAM: Yes, sir. That's right.

14 THE COURT: About the telephone call?

15 MR. GRAHAM: Yes, sir.

16 THE COURT: All right. Go ahead.

17 A. It hurts because he didn't follow standard operating
18 procedure and go through the chain of command. That disrupts
19 harmony in the day-to-day operations. If he should -- don't
20 have to do it, anybody shouldn't have to do that.

21 Q. All right. Well, how did that action affect you as the fire
22 chief?

23 A. It undermined my authority and every supervisor that he had
24 over him, the deputy chief, the assistant chief. It didn't give
25 them a chance to take care of any of the problems.

1 Q. And all you wanted was a chance to solve his problems?

2 A. That's all I need, if I could get a chance.

3 Q. If Mr. Davis had followed the ASOP and exhausted the chain
4 of command, he could have called the mayor. Is that not
5 correct?

6 A. Say that again?

7 Q. I said if Mr. Davis had followed the steps in the ASOP 12,
8 came all the way up, and then after he had exhausted his
9 remedies with you, he would have had a right to gone to the city
10 manager and then spoke with the mayor.

11 A. That's correct. Yes, sir.

12 Q. Now, I believe you testified that you made the
13 recommendation to fire or terminate Mr. Davis; is that correct?

14 A. Yes, sir. After I was given the paperwork from Chief
15 Waters.

16 Q. All right. And do you do that in every case of violation of
17 the merit system where punitive action is taken against that
18 person other than a counseling session?

19 A. That I do it -- repeat that, sir, so I could understand.

20 Q. All right. I said you make that recommendation anytime
21 someone's terminated.

22 A. Yes, sir. Fire department personnel, yes, sir, I would be
23 the one to make the recommendation. Basically, I'm terminating
24 that person. But I make -- handing the paperwork over to the
25 city manager because, you know, there may be another process to

1 follow.

2 Q. Okay. And does the fire department of the City of Phenix
3 City keep a personnel file on all employees of the city?

4 A. Yes. We have a small file on them inside our main office,
5 but the main records are kept in the personnel director's
6 office.

7 Q. All right. And does that include the fire department,
8 police department, and the code enforcement office?

9 A. Yes. Yes, sir.

10 Q. And I want to show you -- do you still have the merit system
11 there with you?

12 A. Yes, sir.

13 Q. All right. Would you turn to merit system rule number
14 14.04?

15 A. Yes, sir.

16 MR. GRAHAM: Oh, I'm sorry. It's page number 51 in the
17 merit system rules and regulations.

18 Q. Are you there, Chief?

19 A. Yes, sir.

20 Q. All right.

21 MR. STEELE: Your Honor, objection. Beyond the scope
22 of direct.

23 THE COURT: I don't know what the question is going to
24 be.

25 MR. GRAHAM: Your Honor, could we -- I asked him to go

1 to Rule 14.04 of the merit system, which is guidelines and what
2 you do when you're a decision maker and you're contemplating
3 terminating someone.

4 THE COURT: All right. Overruled.

5 Q. Are you there?

6 A. Yes, sir.

7 Q. All right. And would you go to Section B of that where it
8 says Use of Past Record?

9 A. Yes, sir.

10 Q. All right. And would you read that to the Court and ladies
11 and gentlemen of the jury?

12 A. It says, in imposing any disciplinary measures on a current
13 charge, the department head shall take into consideration all
14 prior infractions of the city rules and regulations.

15 Q. Okay. And in your decision to recommend termination of
16 Mr. Davis, did you do that?

17 A. Yes, sir.

18 Q. And is that a true and accurate copy as best you know from
19 the Phenix City merit system?

20 A. Yes, sir.

21 Q. And would it apply to a Phenix City firefighter?

22 A. Yes, sir.

23 Q. I'm going to ask you -- well, you've already done that.
24 You've read it. Tell me in your own words what that means.

25 A. It means that you must go into the past record of a person

1 and look at their record as far as the past, their working
2 there, any prior infractions, that you have to take a look at
3 and see which -- what's the necessary steps where you could --
4 whereas just -- see, this particular thing that David done was
5 just a write-up. If it would have been his only infraction,
6 David would not have been terminated. David's past record
7 terminated David. It wasn't what he did with that infraction.
8 That one infraction didn't --

9 MR. STEELE: Objection, Your Honor.

10 THE COURT: Yes. Restrict yourself to answering the
11 question that's asked you. It's a yes or no question.

12 THE WITNESS: Yes, sir.

13 MR. GRAHAM: All right, sir.

14 Q. Do you still have the black exhibit book up there?

15 A. Yes, sir.

16 Q. Go to Exhibit #21, please.

17 THE COURT: Did you say #24?

18 MR. GRAHAM: No, sir. #21.

19 THE COURT: #21.

20 MR. GRAHAM: Yes, sir.

21 Q. Now, Chief, he asked you to read some stuff off of this in
22 your direct examination. I'm going to call your attention to
23 where a paragraph starts with group II, line 4 --

24 A. Yes.

25 Q. -- violation which states. And would you read that?

1 A. Negligence or omission in complying with the requirements as
2 set forth in miscellaneous rules and group III line number six,
3 which states, insubordination by the refusal to perform work
4 assigned, slash, to comply with written or verbal instructions
5 of the supervisory force.

6 Q. And back in September when the "Three-Alarm Turmoil" article
7 came out and all the fire department personnel signed off on
8 that memorandum that they understood the policy and they got
9 copies of ASOP 12 in the -- and how to apply it to the merit
10 system?

11 A. That's correct.

12 MR. STEELE: Objection. Compound question and also
13 beyond the scope.

14 MR. GRAHAM: Judge, I think I let him read it.

15 THE COURT: Overruled. Go ahead.

16 Q. The insubordination that they're talking about here?

17 A. Yes.

18 Q. Is that after Mr. Davis said he understood the rules?

19 A. That's correct.

20 Q. He signed off on them, and then he violated them again?

21 A. That's correct. That was when we had our counseling with
22 them to inform him to follow the steps, follow ASOP 12. That's
23 all he needed to follow.

24 Q. Okay. And he failed to do that?

25 A. Yes, sir. He wouldn't cooperate with that.

1 Q. Now, then it says details of merit system violation, and it
2 does set out that he called Mayor Hardin.

3 A. That's correct.

4 Q. All right. And then below that, starting at the bottom and
5 working up, are these the things that you reviewed --

6 A. That's correct. That's --

7 Q. Wait a minute. Let me --

8 A. I'm sorry.

9 Q. -- before you made your determination whether to recommend
10 termination or not?

11 A. That's correct.

12 Q. Okay. And would you go through those, starting at the
13 bottom and working up?

14 A. Current corrective --

15 Q. Just what's on here, now. Nothing else.

16 A. Yes, sir. Current corrective action taken. Written
17 reprimand. Mistakes due to carelessness. Whatever's -- August
18 2nd, 2004, counseling form, backing the fire apparatus without
19 proper placement --

20 COURT REPORTER: I'm sorry. I'm sorry.

21 THE WITNESS: Excuse me.

22 Q. You need to slow down just a little bit --

23 A. Okay. I'm sorry.

24 Q. -- where she can stay caught up.

25 A. August 2nd, 2004, counseling form. Backing the fire

1 apparatus without proper placement of guides resulting in a
2 vehicle accident.

3 September 19th, 2002, mistakes due to carelessness.

4 October 25th, 2004, counseling form. Group I, line 13,
5 violating a safety rule or practice.

6 March 15th, 2005, letter addressed to Mr. H. Malone, Jr., in
7 regards to handling of personnel issues.

8 August 3rd, 2005, written warning form, group II, line 2,
9 which states threatening, intimidating, coercing, or interfering
10 with fellow employees or supervisors at any time, including
11 abusive language.

12 August 22nd, 2005, counseling memorandum. David Davis
13 ordering a firefighter to do 25 push-ups for forgetting his
14 uniform shirt when reporting for duty.

15 September the 20th, 2005, violation of directive from Chief
16 Wallace B. Hunter regarding free speech and grievance.
17 Violation of ASOP 12. If a member of the fire department has a
18 problem with the department, another department, or city
19 operations and procedures which are work-related and finds it
20 necessary to go above his or her immediate supervisor, he or she
21 must notify the supervisor of the intention to do so. Number
22 three, if a problem cannot be solved by anyone in the chain of
23 command, then the city manager will arrange a hearing with the
24 city council.

25 Q. All right. Now, let me get you, if you would, to go to --

1 have you got a white exhibit book up there?

2 A. No, sir. I just have -- I just have one.

3 MR. GRAHAM: Your Honor, may I approach the witness?

4 THE COURT: You may.

5 MR. GRAHAM: And Judge, I believe you have one of
6 ours. Is that --

7 THE COURT: I do.

8 Q. Chief, I'm going to ask you to look at that document and
9 tell me if you've ever seen it before.

10 A. Yes, sir.

11 MR. STEELE: Which exhibit?

12 MR. GRAHAM: It's number -- I think it's #13 in yours.

13 MR. STEELE: In what --

14 MR. GRAHAM: No. It's #5.

15 Q. All right. Chief, do you -- have you ever seen this before?

16 A. Yes, sir.

17 Q. And tell the ladies and gentlemen of the jury and the Court
18 what this is.

19 A. It's a standard --

20 MR. STEELE: Objection, Your Honor. Relevancy. It
21 goes beyond your earlier rulings with respect to the prior
22 actions.

23 THE COURT: Was this not one of the exhibits that
24 everybody agreed to?

25 MR. GRAHAM: Yes, sir, it was.

1 THE COURT: Admitted? I understood everything in the
2 books now were in by agreement.

3 MR. GRAHAM: That was my understanding also, Judge.
4 And if I misunderstood, I apologize, but I think that was all of
5 our understanding.

6 MR. MCKOON: They introduced it yesterday.

7 THE COURT: Is it already in evidence?

8 MR. MCKOON: Yes, sir.

9 THE COURT: Do you agree, Mr. Steele?

10 MR. STEELE: Actually, I'm not in agreement that we
11 introduced it yesterday. But I'm willing to let this go on if
12 it will move things along.

13 THE CLERK: I've got it down.

14 THE COURT: I'm sorry. I didn't understand you.

15 MR. STEELE: I said I'm not in agreement. I'm not sure
16 if we entered it in, but I know you want to move things along,
17 so --

18 THE COURT: Well, yes, I would. But let's clear this
19 up now. I --

20 MR. STEELE: Your Honor, it was --

21 THE COURT: Just a minute, Mr. Steele. I understood
22 that everything in the books that the jurors have are there by
23 agreement. If not, we need to take them up.

24 MR. STEELE: We have no objection to this exhibit.

25 THE COURT: All right.

1 MR. STEELE: And it's already introduced.

2 THE COURT: Go ahead.

3 MR. GRAHAM: Thank you, Judge.

4 Q. Now, Chief, you said you've seen this before?

5 A. Yes, sir.

6 Q. And would you tell the ladies and gentlemen of the jury what
7 it is?

8 A. It's the administrative standard operating procedure 12.

9 It's the way you go about addressing the city council.

10 Q. All right. And who is the name at the top?

11 A. City of Phenix City Fire Department.

12 Q. Okay. And is this relative to David Davis?

13 A. Yes, sir.

14 Q. All right. And would you -- this was a counseling session;
15 is that correct? Are you on the one I'm on?

16 A. You said -- which one you said, now?

17 Q. #5.

18 A. Okay.

19 Q. There are two -- there are two exhibits.

20 A. Yes.

21 Q. One says #5 and one says #13?

22 A. #5 and one #13. Okay.

23 Q. Okay. Is that where you are?

24 A. Yes. I'm there now.

25 Q. All right. Now, this is a counseling form; is that correct?

1 A. Yes, sir.

2 Q. And this is relative to David Davis.

3 A. Yes, sir.

4 Q. All right. And what was this counseling about? Just read
5 it to the ladies and gentlemen of the jury and the Court, and
6 read it slow where the court reporter can keep up with you.

7 A. This was -- I received this from -- it's Assistant Chief
8 Kenneth Johansen. Sergeant Davis was counseled by Chief Hunter
9 and Assistant Chief Johansen on the 20th of September, 2005,
10 concerning his making or publishing statements to the local
11 media concerning fire department issues which has resulted in
12 impaired discipline and harmony, also speech which has
13 jeopardized close personal loyalties in the workplace. Sergeant
14 Davis was advised of his freedom of speech and the merit system
15 rules and regulations.

16 Sergeant Davis was also counseled for continuous attempts to
17 force unwanted attention through intimidation, coercion, or
18 interfering with coworker, Firefighter Brannon Wilkinson.
19 Firefighter Wilkinson informed Sergeant Davis that the IAFF
20 derogatory statements and comments directed towards him would
21 not be tolerated.

22 The counseling session has been discussed with me, and I
23 understand this notice will be -- will become part of my
24 personnel file. And it's signed by David Davis, Kenneth
25 Johansen.

1 Q. All right. Now, I'm going to ask you to go now in the white
2 book to Exhibit #16.

3 A. Yes, sir.

4 Q. And I'll ask you if you've ever seen this document.

5 A. Yes, sir.

6 Q. In fact, this is a memorandum to H. H. Roberts, City
7 Manager, from you as fire chief; is that correct?

8 A. Yes, sir.

9 Q. All right. And what brought about the necessity for you to
10 write this memorandum to Mr. Roberts?

11 A. I was having a talk with the personnel director, Barbara
12 Goodwin, when she brought up she had -- she had been talking
13 with the mayor, and the mayor told her that David Davis had
14 called her about some issues in the fire department. And I felt
15 it was time for me to inform Mr. Roberts of what -- what
16 problems we was going to have with that, because that shouldn't
17 be transpiring. And we had talked -- also talked to Mr. Davis
18 about that, the mayor, and informed Mr. Davis. And he -- well,
19 he already knew the mayor wasn't part of the chain of command,
20 and he had a procedure to follow to go through that.

21 Q. All right. And in your mind, is this type of activity a
22 disruption to the fire department?

23 A. Yes, it is. It's a disruption.

24 Q. And why is that?

25 A. It's a disruption because it will impair relationships. The

1 mayor is a council member. We have ways of talking to council
2 members. If we go outside of our chain of command and our
3 standard operating procedures to do things like this, it causes
4 the problems. And it can make it look like the fire department
5 is not doing what they're supposed to do to handle their
6 problems or giving people a chance to come through that chain to
7 talk to people to hear their concerns. And we have -- the door
8 is open and the avenue is open for us to do that. And the
9 mayor, being a council member through the city charter, should
10 not be interfering with day-to-day operations. Yes, it
11 causes -- it causes a problem. It's caused a problem between me
12 and the mayor.

13 Q. Okay. And if something doesn't cause actual disruption in
14 the fire department, is it possible it could cause potential
15 disruption?

16 A. That's correct.

17 MR. STEELE: Objection. Speculative.

18 THE COURT: I sustain.

19 Q. And I'm going to apologize if I've asked this question, but
20 I can't honestly remember if I have. But pertaining to his call
21 to the mayor on here, did Mr. Davis follow ASOP 12?

22 A. No, sir.

23 Q. All right. And Mr. Steele asked you a lot of questions
24 about does prior approval mean going through the chain of
25 command or does prior approval to speak to the media -- when --

1 you understood that to be going through the chain of command,
2 that prior approval; is that correct?

3 A. That's correct.

4 Q. Okay. So when he asked you a question that way and you
5 answered the way you answered, it was your understanding that
6 that meant going through the chain of command.

7 A. That's correct.

8 Q. And they also asked you a number of questions in your
9 deposition and also here today that you -- if someone goes
10 directly to the news media or the mayor or the city council,
11 what do they have to do. And your answer was, they can't go
12 directly there.

13 A. No, they can't.

14 Q. And why can't they go directly there?

15 A. Because it's another link in the chain. They have to follow
16 the chain of command or it would cause disruption. They would
17 break ASOP 12.

18 Q. All right. And there were a number of questions asked,
19 well, Chief, once they get to you and they're not satisfied,
20 then can they go directly to the -- the mayor, council, or the
21 news media?

22 A. No.

23 MR. STEELE: Objection, Your Honor. Misrepresenting
24 the questions that were asked.

25 MR. GRAHAM: I believe he asked that question, Judge.

1 MR. STEELE: Your Honor, I did not. I read questions
2 from the deposition, and the deposition did not limit the
3 question the way Mr. Graham is limiting the question.

4 THE COURT: Rephrase.

5 MR. STEELE: He's misstated the question.

6 THE COURT: Rephrase the question the best way you
7 can --

8 MR. GRAHAM: Yes, sir.

9 THE COURT: -- and I'll have to leave it up to the jury
10 as to what you remember was said.

11 MR. GRAHAM: All right, sir.

12 Q. Once a firefighter's gone up to you, as far as ASOP 12 --

13 A. Yes.

14 Q. -- what is the next step that they're required to take
15 before they can go to the media, the newspaper, the mayor, or
16 the council?

17 A. The city manager.

18 MR. GRAHAM: Excuse me just a moment.

19 Q. As far as the issues in the "Three-Alarm Turmoil" and the
20 problems that he had with the probationary period being changed,
21 did Mr. Davis ever give you a chance to work those out?

22 A. Never, sir. No, sir.

23 Q. He never -- he never came to you about those issues?

24 A. No, sir. Mr. Davis never come to my office or asked through
25 the chain of command to come and talk with me about anything

1 since I've been fire chief.

2 Q. All right. And on -- when he testified -- you've been in
3 here the whole time; is that correct?

4 A. Yes, sir.

5 Q. And do you remember him testifying he submitted a list of
6 possible grievances or problems with the fire department to
7 Chief Prater?

8 A. Yes, sir.

9 Q. When you became chief, did he ever present that list of
10 grievances or problems with the fire department to you?

11 A. No, sir. David -- he never done that. Mr. Davis.

12 Q. All right. So again, you didn't have a chance to work on
13 those problems and try to resolve them?

14 A. I never had an opportunity to.

15 MR. GRAHAM: That's all I have.

16 THE COURT: Mr. Steele?

17 MR. STEELE: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. STEELE:

20 Q. Well, Chief, in reference to your deposition, Mr. Graham
21 seemed to be a little disappointed that Mr. Woodley didn't ask
22 you more questions, so I'm going to try to remedy that.

23 MR. MCKOON: Judge, I'm going to object to him making
24 statements.

25 THE COURT: That's not your witness, Mr. McKoon. Go

1 ahead.

2 Q. Now, Chief, as I understand what you just told Mr. Graham,
3 he testified that Mr. Davis didn't go through the chain of
4 command to give you an opportunity to correct the problem
5 regarding the proposed ordinance. Is that an accurate
6 recitation of your testimony?

7 A. That's correct.

8 Q. Now, I want to make sure that there's no confusion here.
9 We've talked about the chain of command. And your spot on the
10 chain of command is below the city manager; and then above the
11 city manager, there's a city council, correct?

12 A. That's correct.

13 Q. City council is the legislative body of the city, correct?

14 A. That's correct.

15 Q. It's the city council that has the authority to amend or not
16 to amend the merit system rules; is that correct?

17 A. That's correct.

18 Q. And the issue that Mr. David Davis was talking about was in
19 fact a proposed amendment that was before the city council;
20 isn't that correct?

21 A. That's correct.

22 Q. Now, you, sir, as fire chief, you don't vote on proposals
23 that are before the city council, do you?

24 A. No, sir.

25 Q. And you've already acknowledged that that particular

1 proposal was passed the very next morning, correct?

2 A. Yes, sir.

3 Q. Now, there's something interesting -- let me get back to one
4 of the exhibits you already talked about.

5 (Brief pause)

6 MR. STEELE: Oh, I'm sorry. It's the first deposition,
7 page 75.

8 Q. Now, Chief, do you recall we spoke about your deposition
9 answer and questions that were asked, page 75 through 77? Do
10 you recall that?

11 A. Yes, sir.

12 Q. Okay. And you also recall, sir, that I showed you, among
13 other things, a memorandum from Chief Hanson that said the
14 department would not tolerate firefighters speaking to the media
15 without prior approval, correct?

16 A. That's correct.

17 Q. And although you said part of the verbiage may not have been
18 the way you would have worded it, but you agreed with the part
19 that said you don't speak to the media without prior approval,
20 correct?

21 A. That's correct.

22 Q. Now, did I understand you right in response to Mr. Graham's
23 questions that your testimony now is that prior approval doesn't
24 actually mean approval, that you could disapprove and they would
25 still go to the media?

1 A. Sir, once they exhaust, they can go anywhere they want to.
2 If you exhaust your standard -- your ASOP and you've done what
3 you're supposed to have done, there's no restrictions on them.

4 Q. Chief, what part of "prior approval" states that there are
5 no restrictions?

6 A. You follow the operating procedure.

7 Q. Chief, doesn't the word "approval" mean that you have to
8 affirmatively give someone permission?

9 A. No, sir, not in that aspect. You follow the procedure.
10 Once you follow these procedures and exhaust them, you have done
11 what you're supposed to have done.

12 Q. Okay. So if "approval" doesn't mean approval anymore,
13 according to you, correct -- and this is ASOP 12, the document
14 you're talking about -- and you've already told us in regards to
15 that "never" doesn't mean never and "stop at the city manager"
16 doesn't mean stop --

17 A. I told you --

18 Q. Turn to ASOP 12, if you could, Chief.

19 A. I told you before that "stop" is talking about what stops
20 with me. But you -- the city manager is above me.

21 Q. Well, Chief, I've got it up here --

22 A. I understand.

23 Q. -- as large as life. And we're talking about access to the
24 city council. You remember that.

25 A. That's correct.

1 Q. Right? And your answer is, as a person -- this was written
2 in '98 -- I guess is trying to get there -- referring to trying
3 to get to the city council, correct?

4 A. That's --

5 Q. All right. And so the body, which is a place you would
6 never get to because it stops at the city manager. You would
7 never get to the council because it stops at the city manager.
8 That's what that says.

9 MR. GRAHAM: Your Honor, I'm going to object. That's
10 been asked and answered on direct and on redirect.

11 THE COURT: Yes. He's answered that.

12 Q. Chief, do you still have before you the copy of your
13 transcript of your deposition from November 6th, 2007?

14 A. Yes, sir.

15 Q. Okay. And if you would turn once again to pages 11 and 12
16 that we talked about.

17 A. Yes, sir.

18 Q. And on page 12, there is a question that we have to review
19 again. The question is: Does anyone else in the fire
20 department have the discretion or opportunity to speak to the
21 media without prior approval on any issues affecting the fire
22 department?

23 Do you remember that question?

24 A. Yes, sir.

25 MR. GRAHAM: Your Honor, objection again. Asked and

1 answered a number of times.

2 THE COURT: Overruled. Go ahead.

3 Q. Correct?

4 A. Yes, sir.

5 Q. And your answer was: No, sir. Correct?

6 A. Yes.

7 Q. Did -- did I hear you right when Mr. Graham was -- was
8 questioning you that he said that this question referred to
9 speaking about fires only?

10 A. Basically, day-to-day operations. Yes, sir.

11 Q. What part of this question that says any issues affecting
12 the fire department indicated to you that Mr. Woodley was asking
13 you about fires only?

14 A. Any issues, sir, to me, means any issues affecting the fire
15 department the same. I guess we have two different
16 understandings of that.

17 Q. So the definition of "any" means fire, but it's not broader
18 than that.

19 A. It's the word "related to" which brings me to -- it's got to
20 be something that's related to the fire service.

21 Q. According to your testimony, the proposed legislation was
22 related to the fire service.

23 A. (Nods head)

24 Q. That wasn't a fire, was it?

25 A. It's related to the fire service, sir.

1 Q. Correct. And this question said: Does anyone else in the
2 fire department have discretion or opportunity to speak to the
3 media without your prior approval on any issue affecting the
4 fire department. And your answer was: No, sir.

5 There's nothing about that question, Chief, that limits or
6 even speaks about an actual fire, is there?

7 A. I was going off of what was based on my thinking, sir.

8 Q. So just so we have it clear, when you were asked whether
9 people had the authority or discretion or opportunity to speak
10 to the media without your prior approval on any issues affecting
11 the fire department, you didn't understand the question of any
12 issues relating to the fire department to be referring to
13 anything but an actual fire?

14 A. Sir, I said fire-related issues.

15 Q. And you agree with me, correct, that the proposed ordinance,
16 this proposed piece of legislation, was a
17 fire-department-related issue.

18 A. That's correct.

19 Q. Okay. So according to this, your statement, an employee is
20 not allowed to speak to the media concerning that issue, quote,
21 without your prior approval, correct?

22 A. Sir, we have a chain that you follow when you speak. You go
23 up that chain. You speak to anyone you want to speak to.

24 Q. Okay. That's that whole approval doesn't mean approval
25 explanation?

1 A. The chain is the approval. That chain that you follow is
2 your approval. Once you exhaust that chain, that's your
3 approval.

4 Q. Okay. I thought I had it handy, the blow-up of ASOP 12, but
5 I know you have it in front of you as Exhibit -- I believe
6 Exhibit #5 in the black notebook above you. Are you with me,
7 Chief?

8 A. I'm with you.

9 Q. Since earlier this morning when we talked about ASOP 12 and
10 this point in time, you have to agree with me that the phrase
11 "media" or "access to the media" hasn't been added to ASOP 12,
12 correct?

13 A. No, sir.

14 Q. Okay. And what language in ASOP 12 states that after
15 exhausting the chain of command, you can speak to whoever you
16 choose?

17 A. Sir, I'm going to give you this answer again. ASOP
18 number --

19 MR. GRAHAM: Your Honor, we object. Asked and answered
20 a number of times.

21 THE COURT: This is repetitive. Move on.

22 MR. STEELE: Okay.

23 Q. Now, you do agree that the proposed ordinance at the time
24 that Mr. Davis spoke about it still was a proposed ordinance
25 before the council, correct?

1 A. Yes, sir.

2 Q. And it's your belief that even on a policy, an ordinance, a
3 law that isn't in effect that you, as chief of the department,
4 do not control, do not enforce because it's not part of the law
5 of the city, even on that --

6 MR. GRAHAM: Your Honor, object. Compound question.

7 MR. STEELE: I don't think I finished the question.

8 THE COURT: Go ahead.

9 Q. Even -- Chief?

10 A. Yes, sir. I'm with you.

11 Q. Okay. That even on that, a member of your department off
12 duty can't speak to the mayor or somebody else on the council
13 without going through the chain of command?

14 A. Sir, he should have followed the standard operating
15 procedures. It's worked for me for a long time.

16 Q. So the answer to my question is yes?

17 A. You should follow ASOP 12.

18 Q. Okay. Even if -- to speak to a council member against --
19 about a piece of legislation that touches on the fire
20 department.

21 A. He should have followed ASOP 12. Because my insurance don't
22 stop when I get off work.

23 Q. Chief, is the answer to my question yes or no?

24 A. He should have followed ASOP 12.

25 Q. Okay, Chief. Apparently you're not willing to give that a

1 yes or no answer, so we'll move on.

2 MR. GRAHAM: Your Honor, I move to strike that
3 statement by Mr. Steele. He's --

4 THE COURT: Yes. That's stricken. Go ahead.

5 Q. Now, when Mr. Graham questioned you, he asked you some
6 questions about the City of Phenix merit system rules and
7 regulations. Do you recall that?

8 A. Yes, sir.

9 Q. And you and I talked about a provision in there, too, that
10 you agreed when we were talking that it means that it doesn't
11 limit an employee's ability to engage in this political activity
12 off duty, correct? And you agreed with me, sir, that the merit
13 system rules makes a clear distinction between on duty and off
14 duty, correct?

15 A. I agree with you now, sir. That's political activity, which
16 is different from ASOP 12.

17 Q. Okay. So I'm glad we're getting closer here since -- at the
18 time Mr. Davis was speaking to the mayor about the proposed
19 ordinance, it was something before the city council, the mayor,
20 as he said, you know, he handles things the way he handles them
21 because it's politics. So we're in agreement, now, Mr. Davis
22 was engaging in political activity.

23 A. Mr. Davis is a firefighter for the City of Phenix City,
24 which he falls under ASOP 12, just like myself.

25 Q. Okay. Now, Chief, we also talked about how the government

1 operates in Phenix City and the fact that the city council is
2 the legislative body, correct?

3 A. That's right. Yes, sir.

4 Q. And the city council establishes and passes the merit system
5 rules and regulations, correct?

6 A. That's correct. They vote on them.

7 Q. You're not above the city council, are you, sir?

8 A. Am I above them? No, sir.

9 MR. GRAHAM: Your Honor, objection. That's been asked
10 and answered.

11 THE COURT: Are you getting at something new,
12 Mr. Steele?

13 MR. STEELE: Well, this is directly related to
14 questions that Mr. Graham answered.

15 Q. Mr. Graham suggested that this provision of the merit system
16 rules with respect to political activity somehow doesn't apply
17 to firefighters because your department has an SOP on the
18 issue. And I just want to clarify that we're both in agreement
19 that when the council passes legislation, you, as the head of
20 the department, don't have the discretion to ignore that
21 legislation, correct?

22 A. No, sir.

23 Q. You don't have the discretion to take away rights that the
24 city council has acknowledged that employees have.

25 A. Never tried to.

1 Q. And sir, in your earlier deposition you acknowledged that
2 you're generally familiar that there's a First Amendment to the
3 United States Constitution. You remember saying that?

4 A. Yes, sir.

5 Q. And that you're generally aware that the First Amendment to
6 the United States Constitution protects the right to freedom of
7 speech, correct?

8 A. That's correct.

9 Q. Do you know any provision in the First Amendment or the
10 United States Constitution that provides for an exception for
11 the City of Phenix City?

12 A. Not that I know of.

13 Q. Aware of any provision in the Constitution or the First
14 Amendment of the United States that provides for an exception
15 for your fire department?

16 A. What do you mean by that question?

17 Q. Are you aware of any provision in the United States
18 Constitution and specifically the First Amendment right to
19 freedom of speech that provides --

20 MR. GRAHAM: Your Honor, I'm going to object to that.
21 He's not a lawyer. He's not a legal authority. He wouldn't
22 have that within his knowledge.

23 THE COURT: Yes. I sustain. This is getting into a
24 question of law and a matter for the Court. I sustain.

25 Q. It's your understanding, Chief, as head of the department,

1 that in addition to being bound by the merit system, that you're
2 also bound by the U.S. Constitution, correct?

3 A. Yes, sir.

4 Q. And Chief, when speaking to Mr. Graham, you went through and
5 talked about things that were on the warning form that notified
6 Mr. Davis of his termination and talked about group II offenses
7 and group III offenses. You recall that whole conversation?

8 A. Yes, sir.

9 Q. Now, as you're here today, you don't disagree with what you
10 said in your deposition back in April of 2006?

11 MR. STEELE: Page 82.

12 A. That's in April?

13 Q. And that's at page 82, sir. Do you still have that
14 deposition in front of you?

15 A. Yes. Yes, sir.

16 Q. Okay.

17 (Brief pause)

18 THE COURT: Repeat the question, Mr. Steele.

19 Q. Ready, Chief?

20 A. Yes.

21 Q. Now, do you recall --

22 MR. STEELE: Strike it.

23 Q. The question was as you sit here today, you still abide by
24 and agree with the testimony you gave under oath during your
25 deposition in April of 2007, correct?

1 A. Yes, sir.

2 Q. And when asked at that deposition this question, you gave
3 this answer, didn't you? And the question is: If you would
4 just listen to my question. Let me rephrase it. It's real
5 simple. It says, quote, discharge as per merit system rules and
6 regulations for second group II offense, end quote. And then
7 the question continues: What specifically was the second group
8 II offense?

9 And what was your answer, sir, at line 20 on page 82? It's
10 also up here.

11 A. Contacting the mayor.

12 Q. Correct. That was your answer.

13 A. Yes.

14 Q. And when you were asked about the group III offense on page
15 84 of your deposition, if you would like to refer to it --

16 A. Yes, sir.

17 Q. -- the question was asked whether the group III offense,
18 which was his first group III offense for which he was
19 discharged, was in fact his telephone communication with Mayor
20 Hardin. And your answer was: That is correct. That was the
21 violation.

22 Is that accurate?

23 A. Let me finish reading that.

24 (Brief pause)

25 THE COURT: Point him to the line and read the answer,

1 Mr. Steele. Let's move on.

2 MR. STEELE: Okay.

3 Q. Chief, are you with me?

4 A. I'm trying my best to follow you. Now, which line do you
5 want me to look at?

6 Q. We're looking at page 84 on your transcript beginning there
7 at line 9 and going through to line 14.

8 A. Okay.

9 Q. Do you see that?

10 A. Yes. I see line 9 to 14.

11 Q. Okay. And you were asked -- concerning the group III
12 offense that was listed as a reason for the discharge, you were
13 asked: Was that in fact his telephone communication with Mayor
14 Hardin? And your answer was: That is correct. That was the
15 violation.

16 A. That's correct.

17 Q. All right. And it's still correct as you sit here today.

18 A. That's correct.

19 MR. STEELE: Nothing further, Your Honor.

20 THE COURT: Mr. Graham, do you have anything further?

21 MR. GRAHAM: Yes, sir. Just a couple.

22 RECROSS-EXAMINATION

23 BY MR. GRAHAM:

24 Q. He went back over again in your second deposition with you
25 that series of questions that Mr. Woodley asked you about who

1 could talk to the media in the fire department and who could be
2 designated to talk to the media?

3 A. Yes, sir.

4 Q. And he got into this colloquy with you about whether it was
5 fire or not. Go over to page 13, line 4. And this is a
6 continuation of the questioning on the bottom of 11 and 12 of
7 your deposition. And the question was, would you (sic) be the
8 next person if you are absent to speak to the media about fire.
9 Do you see that?

10 A. Now, which one you said? You said --

11 Q. Page 13.

12 A. -- 13 on the second one, in November.

13 Q. Right.

14 A. Okay. Page 13, which line?

15 Q. Line 4.

16 A. Okay.

17 Q. The question that Mr. Woodley asked you was --

18 A. Okay. I'm getting there.

19 Q. Who would be the next person if you are absent to speak to
20 the media about fire.

21 A. That's correct.

22 Q. All right. And what was your answer?

23 A. I said: Presently, that would be Deputy Chief Hanson.

24 Q. Okay. Thank you. Now, on ASOP 12, the proposal that
25 Mr. Davis called the mayor about, was it work-related business?

1 A. Yes, sir.

2 Q. All right. And ASOP 12 covers that, doesn't it?

3 A. That's correct.

4 Q. Are the mayor and council in the chain of command? I just
5 want everybody to understand that.

6 A. No, sir. They have -- they are not in the chain.

7 Q. Do firefighters have an unlimited right to free speech, or
8 is that right limited by the merit system rules and regulations
9 and the ASOP 12?

10 MR. STEELE: Objection, Your Honor. As Mr. Graham
11 pointed out, the witness is not an attorney.

12 THE COURT: I sustain.

13 Q. And he was talking about the last group II and the group III
14 in the write-up, the written warning form.

15 A. Yes.

16 Q. Was there a prior group II?

17 A. There was a prior group II in the list of offenses --

18 MR. STEELE: Objection, Your Honor. Asked and
19 answered.

20 THE COURT: Yes. He has answered that question.

21 MR. GRAHAM: Okay. That's all I have, Your Honor.

22 MR. STEELE: Thank you, Your Honor.

23 THE COURT: All right.

24 MR. STEELE: Your Honor?

25 THE COURT: Oh, I'm sorry. I thought you said no. Go

1 ahead.

2 MR. STEELE: Thank you. This will be brief.

3 REDIRECT EXAMINATION

4 BY MR. STEELE:

5 Q. Chief, Mr. Graham just went back to page 13 of your second
6 deposition transcript, and I want to go back to that page as
7 well. Are you on that page, sir?

8 A. Yes, sir.

9 Q. All right. And I want you to look beginning at line 15 of
10 that page. Are we both at the same place?

11 A. Yes, sir.

12 Q. This was the question: But if tomorrow a rank-and-file
13 firefighter currently employed by the City of Phenix City and
14 its fire department spoke to the media on his own about issues
15 affecting the fire department without your prior approval, that
16 would be a violation of the merit system rules and regulations
17 of the city. And your answer was: Yes, sir. Correct?

18 A. Yes.

19 MR. STEELE: Thank you, Your Honor.

20 MR. GRAHAM: Nothing further, Your Honor.

21 THE COURT: All right. Just stay there just a minute.

22 We're going to break for lunch at this time. Members
23 of the jury, remember all my admonitions about everything I've
24 told you in the past. They still apply now. I'll ask you to be
25 back in the jury room in time to begin the trial at 1:15. 1:15.

1 (Jury out at 11:55 a.m.)

2 THE COURT: Court is in recess.

3 (Lunch recess at 11:55 a.m. until 1:11 p.m., at which time
4 proceedings reconvened without the jury present, as
5 follows:)

6 THE CLERK: Court is in session. You may be seated.

7 THE COURT: Gentlemen, before we bring the jury in, I
8 want to tell you that we're going to pick up the speed of this
9 trial. I don't like to interrupt lawyers in front of the jury
10 to tell you to move along and not repeat questions, but we've
11 got to move faster than we've been moving now. And you could
12 have moved faster. So I'm just forewarning you. If I have to,
13 I'm going to tell you to move on to another subject.

14 Bring in the jury.

15 (Jury in at 1:11 p.m.)

16 THE COURT: Be seated. All right. Mr. Steele, call
17 your next witness.

18 MR. STEELE: Thank you, Your Honor. We call City
19 Manager Roberts.

20 **HERMAN H. ROBERTS**, the witness, having been duly
21 sworn, testified, as follows:

22 DIRECT EXAMINATION

23 BY MR. STEELE:

24 Q. Mr. Roberts, would you please state your name and your
25 current position for the record.

1 A. Herman H. Roberts, City Manager, City of Phenix City.

2 Q. And Mr. Roberts, how long have you been city manager in
3 Phenix City?

4 A. Approximately six and one-half years.

5 Q. And were you assistant city manager and a code enforcement
6 officer prior to that?

7 A. I was.

8 Q. Based upon earlier testimony, would you agree that with
9 respect to decisions to terminate employees, you, as city
10 manager, have the authority to do that?

11 A. I have the authority to terminate employees.

12 Q. And department heads below you do not have that authority.
13 Is that also correct?

14 A. No, sir. That is not correct.

15 Q. Okay.

16 A. That delegation of duties has been delegated down to them.

17 Q. Okay. So you've delegated to -- let's just get specific.
18 Have you delegated to Chief Hunter the authority to terminate
19 employees?

20 A. Yes, sir. As I said before, all department heads have the
21 authority to terminate their employees.

22 Q. Okay. And you believe that the city charter allows that
23 type of responsibility to be delegated?

24 A. The city charter will tell you that I'm responsible for the
25 termination and that I do have that authority to delegate it

1 down -- down the line.

2 Q. Okay. If you would, sir, please turn to Exhibit #22 in the
3 black notebook in front of you. And, sir, Exhibit #22 is an end
4 of employment form involving Mr. Davis, and it's dated April 21,
5 2006. There's a line for the city manager's signature, but
6 there's no signature on this form.

7 A. That is correct.

8 Q. And do you know the reason for that?

9 A. I do.

10 Q. And what is that reason?

11 A. I was out of town.

12 Q. Prior to April 21, 2006, or on April 21, 2006, did you
13 approve the termination of Mr. Davis?

14 A. Sir, I knew the circumstances of the termination. I did not
15 approve it, nor did I disapprove it.

16 Q. Okay. Not one way or the other at that point?

17 A. No, sir.

18 Q. Okay. Have you ever informed Chief Hunter that he has the
19 authority to terminate employees?

20 A. Yes, sir. They have all been informed.

21 Q. Were you present for his testimony earlier today when he
22 said his authority is to recommend and that the authority to
23 terminate rests with you?

24 A. I heard his testimony earlier today.

25 Q. Given that authority that you've delegated, when a

1 department head makes a decision to terminate an employee, is
2 that termination final unless the employee chooses to invoke the
3 appeal process through the hearing review board?

4 A. That is correct. If they choose not a review board hearing,
5 then after the allotted time limit that's required, then I would
6 sign the termination notice. There is a reason why I did not
7 sign it, if you would like to hear it.

8 Q. I'm fine with the answers you've given, sir.

9 A. Thank you.

10 Q. Now, employees do have an opportunity to -- to appeal to the
11 hearing review board, correct?

12 A. Yes, sir.

13 Q. And that occurred with respect to Mr. Davis?

14 A. Yes, sir.

15 Q. And you testified at that hearing, as a matter of fact,
16 right?

17 A. Yes, sir.

18 Q. Now, at the conclusion of the hearing, the hearing board
19 makes its determination and puts it in writing and the board
20 members sign off on that, correct?

21 A. That's correct, sir.

22 Q. And then they submit it to you, sir?

23 A. Yes, sir.

24 Q. And under the policies and procedures, do you then have the
25 authority to accept or reject the decision of the review board?

1 A. I do.

2 Q. And in this case, after testifying in favor of Mr. Davis's
3 termination, when the review board recommended termination, you
4 agreed with that?

5 A. I did.

6 Q. And ultimately, at that point in the process, the decision
7 rested with you.

8 A. Once the review board gave it to me, then the decision
9 rested with me. Whether I approve of the board's ruling or not,
10 it was up to me to decide.

11 Q. Now, are you familiar with -- I may get his rank wrong, so
12 I'm apologizing in advance. Is it Captain Karl Taylorson at
13 this point?

14 A. Yes, sir, that is correct. He is a captain at this time.

15 Q. Okay. And you know who Mr. Taylorson is, Captain Taylorson?

16 A. Yes, I do.

17 Q. Okay. And it's true, sir, isn't it, that you testified at
18 your deposition that there was an occasion in which
19 Mr. Taylorson discussed with you various issues of concern
20 within the fire department?

21 A. In my deposition?

22 Q. Correct.

23 A. Could I see it, please?

24 Q. Sure.

25 MR. STEELE: May I approach, Your Honor?

1 THE COURT: You may.

2 Q. Mr. Roberts, what I've handed you is a copy of the
3 transcript of your deposition for the deposition taken on April
4 4, 2007. And if you'd take a minute to look at page 45 and 46,
5 and then my question to you is whether that refreshes your
6 recollection of the conversation you had with Mr. Taylorson
7 concerning certain issues related to the fire department.

8 A. Yes, sir. I have talked with Captain Taylorson.

9 Q. Okay. And on that occasion, among the issues that Captain
10 Taylorson raised with you was issues relating to the morale of
11 the department, staffing issues, and equipment issues; is that
12 correct?

13 A. He talked with me about several things. These talks, sir,
14 were at a National Guard meeting in just general terms.

15 Q. Okay. So I believe you testified that this came about at a
16 National Guard meeting. And you ran into Mr. Taylorson, and he
17 proceeded to talk to you about matters of concern within the
18 fire department. Is that fair?

19 A. Yes, sir. That's right. He worked for me at the National
20 Guard.

21 Q. Okay. The conversation I'm referring to, though, is a
22 conversation about concerns he had about the Phenix City Fire
23 Department, not how the National Guard operates, correct?

24 A. I understand your question, sir. Yes.

25 Q. Okay. Now, did you inquire as to whether Captain Taylorson

1 had received the permission or authority or okay of Chief Hunter
2 to raise those issues directly with you?

3 A. Sir, when I talked with Sergeant Taylorson -- excuse me --
4 Captain Taylorson in the fire department, Sergeant Taylorson in
5 the United States Army National Guard -- these were general
6 terms. And sir, I don't believe he had to ask to come up the
7 chain of command when somebody higher than he asked him. You
8 can go down the chain just as well, sir.

9 Q. And as I understand your testimony in your deposition, you
10 contend that you invited the communication because you asked
11 Captain Taylorson how things were going; is that correct?

12 A. That's pretty accurate. Yes, sir.

13 Q. Okay. And from your perspective as city manager, by asking
14 him on that -- on that occasion how things are going, you, in
15 essence, invited him to speak with you in general terms about
16 concerns at the department?

17 A. That's correct. Anytime there's concerns within the
18 department, I think any city manager wants to know about it.

19 Q. Okay. And as you testified, you don't believe he went
20 through the chain of command first, but you believe that's okay
21 because you invited the communication.

22 A. Sir, I invited the communication. He did not come to me to
23 talk about it.

24 Q. Okay. And the full extent of your invitation of that
25 communication was asking him how things are going, correct?

1 A. Of course, Sergeant Taylorson answered -- Captain Taylorson
2 answered --

3 THE WITNESS: Excuse me, Judge. I get my rank messed
4 up.

5 A. He certainly did answer.

6 Q. Okay. I just wanted to make sure that you didn't
7 specifically say to Captain Taylorson, you know, how are things
8 going at the department with respect to equipment issues or how
9 are things going at the department with respect to staffing. I
10 understood your testimony as a more general how are things
11 going. Is that fair?

12 A. That's correct. And there again, Captain Taylorson properly
13 brought these things out or some of the things out that he felt
14 was a concern.

15 Q. Okay. And you still believe that Captain Taylorson did
16 nothing wrong in having that conversation with you, because you
17 effectively invited some feedback from him. Is that accurate?

18 A. Sir, on two -- on two different ways. As his officer in
19 charge in the National Guard and as his city manager, I would
20 ask about work-related issues in a general conversation with any
21 of them out there, to include some of my police officers and
22 public works people that's under my command -- were under my
23 command.

24 Q. Okay. And I don't see anything wrong with that at all,
25 sir. I just want to make sure that I understand on this

1 occasion, in your understanding as city manager, is if you come
2 across or happen to run into an employee of the city and you ask
3 him or her how things are going, then it's okay for that person
4 to answer your question.

5 A. I do that daily, sir.

6 Q. Okay. Is that a little bit of an open-door policy?

7 A. No, sir, that's not an open-door policy. I would like to
8 explain.

9 Q. Okay.

10 A. If I go through the shop area in the public works, for
11 instance, if -- if I have a mechanic that's pulling an engine or
12 something of that nature, I may ask, how is the job going; is
13 everything going good today; are y'all working safely. Things
14 that a normal supervisor or normal person in charge would ask
15 his employees.

16 Q. Okay. And when you do that, the employee is perfectly free
17 to respond.

18 A. Yes, sir. They respond to me pretty freely.

19 Q. I had a hunch they didn't refuse to answer you, but I just
20 wanted to clarify that for you. I'd like to ask you, sir, a
21 little bit about access of employees -- specifically, employees
22 of the fire department -- to the city council and some testimony
23 that you provided under oath at your deposition. And you agree
24 with me that you were deposed in this case and you took an oath,
25 and you agreed to tell the truth, correct?

1 A. I was -- yes, sir, I do. I was deposed two times.

2 Q. Okay. And to the best of your ability during the
3 depositions, you did tell the truth.

4 A. Yes, sir.

5 Q. Now, at the deposition -- excuse me. This is page 83. Sir,
6 this is a blow-up of some questions and answers from your
7 deposition beginning on page 83 in the transcript that I've
8 provided to you. Have you been able to locate that page?

9 A. I'm on that page, sir.

10 Q. Okay. Now, during your deposition in this case, you were
11 asked some questions with respect to access to the city
12 council. And we have here on page 83 beginning at line two a
13 question and an answer with respect to that issue. And the
14 question was: Are there any circumstances under which a
15 firefighter working for the city can communicate with the mayor
16 of the city about issues that involve the city fire department?

17 And what was your answer, sir?

18 A. Let me read right in front of it. Let me read just a little
19 bit more. Just a second, please.

20 Q. Okay.

21 A. Okay, sir.

22 Q. Okay.

23 A. Sir, to answer your question, my answer is: Not to my
24 knowledge.

25 That, in itself, you would probably have -- need to go back

1 to refer to page 82. I assumed by the -- by the type of
2 question that we were talking about a firefighter who is on
3 duty, is there any way that he can get straight to the council,
4 so to speak. And my answer, not to my knowledge.

5 Q. Okay. So the question -- of course, it's on the blow-up
6 there in front of you -- was simply are there any circumstances
7 under which a firefighter working for the city can communicate.
8 And you understood that to mean, then, when they were on duty?

9 A. From the prior question -- line of questioning that I was
10 asked. And that is my answer. Not to my knowledge.

11 Q. Okay. I guess, Mr. Roberts, then, implicit in your answer
12 and your explanation would be that there are different
13 limitations on a firefighter's ability to speak to the mayor
14 whether they're on duty or off duty, correct?

15 A. Let -- let me -- can I put it in my own words, sir?

16 Q. Well, if you could my question first to --

17 A. Okay. Anybody at any time can follow -- can talk with any
18 elected person so long as he's followed the predesignated rules
19 that sets forth on how the employee would get to that specific
20 person.

21 Q. Okay. I just want to make sure that I've got this correct
22 for you. When we asked the question, are there any
23 circumstances, you were thinking just on duty, correct?

24 A. At that time, yes, sir.

25 Q. And you drew a distinction whether the employee is on duty

1 or off duty, apparently, in your thinking of that question. Is
2 that fair?

3 A. That is a fair assumption.

4 Q. Okay. And you were then asked the question: Would your
5 answer be the same if I referred to city council members? Are
6 there circumstances or situations under which a firefighter can
7 speak to a city council member about issues involving the city's
8 fire department?

9 Do you see that question?

10 A. Yes, sir, I do. And I --

11 Q. Okay. And your answer to that question?

12 A. Yes, sir. I'll be glad to answer it to you.

13 Q. Could you read the answer to us, please?

14 A. Oh, yes. Do you want me to read it? They can come to the
15 council through the proper procedures. And I think that proper
16 procedure goes through his chain of command. If we cannot
17 correct it, then if we feel -- ultimately, if I feel that it
18 needs to get to the council, then I will get it to them.

19 Q. Okay. As far as this answer, you weren't referring just to
20 someone who's on duty. In this answer, you were referring to on
21 duty or off duty. Is that fair?

22 A. I was speaking of both. I wanted to be sure that I cleared
23 my answer up in the first question, sir.

24 Q. Okay. So you were speaking to both. And your answer is
25 that if you go through the chain of command and if you -- if

1 you -- feel that it needs to get to the council, then you will
2 bring it to them. Is that --

3 A. If I --

4 Q. Excuse me, sir. Was that your answer when you gave --

5 A. What you see on the board is my answer, sir.

6 Q. Okay. Now, you were given another question. We wanted to
7 make sure we had something clear on this. And the question:
8 You, as the city manager, will raise concerns? And that's an
9 immediate response to your prior answer. And your answer is:
10 Yes. The bottom line, even on a work session of whatever comes
11 before the council for a work session, we control, whether it be
12 civilians coming in or whomever. It's a very structured form of
13 government.

14 Do you remember giving that answer?

15 A. I do.

16 Q. Okay. And at least at that time, your testimony was that
17 you, as city manager, will bring the concern or raise the
18 concern with the council.

19 A. Sir, we will make arrangements for the -- whoever wants to
20 see the council to get there.

21 Q. Okay. I was going to go on to the next one, but before I
22 do --

23 A. Okay.

24 Q. -- you, as city manager, will raise the concerns. Isn't
25 raising the concerns, you as city manager raising the concerns,

1 something different than merely making arrangements for someone
2 else to raise the concerns?

3 A. Sure it is. Could I expand on that, please?

4 Q. Sure.

5 A. When you see the word "raising concerns," you know, once you
6 get to the council, we have -- and it's pointed out there again,
7 structured. On the work agenda, we have an agenda. And there's
8 an application, and we have to meet the laws of the -- of the
9 Open Meeting Act of the State of Alabama, number one. And it's
10 published in the paper, and then their concerns is listed for
11 what that particular person wants to talk to the council about,
12 whether it be a firefighter, police officer, or any public
13 person that wants to address the council.

14 Q. Okay. But if the individual is not just any public person,
15 if that individual is a firefighter, your testimony, whether on
16 duty or off duty, when it gets to the city manager level, if you
17 as city manager believe that the concern needs to go to the
18 council, then you will raise it with the council.

19 A. Sir, I don't dictate whether he goes to the council. I have
20 to arrange a meeting for him. I will try to alleviate the
21 problem as I can, at my level, if possible. If not, then it's
22 elevated on up. If it's on a fire-related issue, then it has to
23 come up through the chain of command. If that firefighter wants
24 to come and talk to the council about his garbage pickup, all he
25 has to do is get on the agenda.

1 Q. Well, when you had your deposition and you heard the
2 questions and you gave the answers -- and as you pointed out,
3 these things have to be taken in context. You weren't under the
4 misimpression that you were being asked whether Mr. Davis could
5 speak before the council over whether his trash pickup is on
6 Tuesdays or Wednesdays. You understood the question, didn't
7 you, sir, to be a questions relating to issues concerning the
8 fire department?

9 A. Work-related issues. Yes, sir, I did.

10 Q. Work-related. Okay. Now, I want to make sure that we have
11 a fair understanding of what you testified to. And we want to
12 make sure that you had every opportunity at your deposition to
13 be clear, so you're asked once again: Is a firefighter
14 permitted to -- after exhausting the chain of command on an
15 issue affecting the fire department, is that firefighter then
16 allowed to address the city council or city council members on
17 that issue?

18 And what was your answer, sir?

19 A. My answer says: Not by the merit system. I don't think so,
20 sir.

21 Q. And then you were asked: So if a firefighter did that after
22 exhausting the chain of command, that firefighter would be
23 violating the merit system rules and regulations?

24 And your answer?

25 A. I think he would be violating the intent of the merit system

1 rules and regulations. I do.

2 Q. Okay. And then we asked whether he would be violating the
3 language in the merit system rules and regulations.

4 A. I said: I feel like that would be, yes.

5 Q. Okay. And when you gave this testimony at your deposition
6 that even after exhausting the chain of command a firefighter
7 would not, under the merit system, be allowed to speak to the
8 city council, you were, as you told us already, under oath and
9 telling the truth.

10 A. That is correct, sir. There was never any mention, sir, of
11 ASOP 12. Strictly meant the merit system.

12 Q. Well, that's interesting, sir. So we asked a question.
13 Now, our question wasn't limited up here. Is a firefighter
14 permitted to -- after exhausting the chain of command in the
15 fire department, is that firefighter then allowed to address the
16 city council or city council members on the issue? And you
17 answered: Not by the merit system.

18 Are you testifying today that that was only a partial
19 answer, that when you took your oath to tell the truth and the
20 whole truth, on this question you decided to say, well, not by
21 the merit system, but not volunteer that you think that there's
22 a different policy that allows for it?

23 A. Sir, there's a policy that's under the merit system that he
24 could have followed, which is called a grievance procedure which
25 handles work-related activities.

1 Q. Okay. Now, in regard to the grievance procedure, I'm glad
2 you raised that issue for us. In the black binder in front of
3 you, sir, we have a copy at tab three of the City of Phenix City
4 merit system rules and regulations.

5 A. What's the page, please?

6 Q. Tab number three. And as you just explained, under the
7 merit system, you believe that there was a procedure to follow
8 for someone who would want to -- a firefighter who would want to
9 speak to the council, as set forth in the --

10 A. I said to present a grievance, sir.

11 Q. Well, again, I -- referring you back to this question, the
12 question wasn't limited to a grievance. It wasn't limited to
13 the merit system. It was a question seemingly that you
14 understood, because you answered it without seeking any
15 clarification on whether, after exhausting the chain of command
16 on an issue affecting the fire department, is that firefighter
17 then allowed to address the city council or city council members
18 on that issue. And your answer was -- was no.

19 A. Was no, not by the merit system.

20 Q. So are you trying to tell me today that when you answered
21 that question no, not by the merit system, that that was -- you
22 were not telling the whole truth, that there's some other system
23 that allows --

24 A. No, sir.

25 Q. -- the firefighter to get to the city council?

1 A. I was strictly speaking of the merit system.

2 Q. Sir, the question is right there before you and you have the
3 deposition. Will you show me in that question where it says
4 merit system?

5 A. The question does not, and the answer does.

6 Q. Your answer does.

7 A. Yes.

8 Q. Your oath, though, Mr. Roberts, was to tell the truth and
9 the whole truth.

10 A. Sir, I told the truth about the merit system.

11 Q. Okay. But your testimony today is that although you
12 answered that question, no, not by the merit system, that you
13 were aware of some other system of getting to the city council?

14 A. Yes, sir. I have -- there's another way of getting there,
15 yes, sir.

16 Q. Okay.

17 A. But not by the merit system.

18 Q. Okay. Well, tell me this, sir. When you were asked this
19 question under oath, "is a firefighter permitted -- after the
20 exhaustion of the chain of command on an issue, is that
21 firefighter allowed to go to the city council or city council
22 members," why didn't you tell us that there's another system
23 that would allow you to answer that question yes instead of
24 answering that question no?

25 A. Sir, I don't have an answer for that.

1 Q. Okay. You made a reference to the grievance procedure as
2 being one of the mechanisms. Is that -- is that fair?

3 A. That's fair.

4 Q. Okay. And referring you back to Exhibit #3 -- and on mine,
5 it has page 59 at the bottom, Section 15.02, concerning
6 complaints and grievances.

7 A. I'm at that section.

8 Q. Okay. And as city manager, of course, you're fully familiar
9 with the grievance procedure that governs the employees in
10 Phenix City, correct?

11 A. I am.

12 Q. And you have a role in that process, your --

13 A. I do.

14 Q. Okay. Now, I just have a couple of questions for you on
15 that. There's a procedure under 15.023. Do you see that, sir?

16 A. 15.023?

17 Q. Yes. Procedure for Presentation of a Grievance?

18 A. I do.

19 Q. Okay. And to the best of your knowledge, this procedure was
20 the law of Phenix City at the time that Mr. Davis raised his
21 concern with the mayor.

22 A. This is the law that was in effect if he chose to follow a
23 grievance procedure. Yes, sir.

24 Q. Okay. Well, correct me if I'm wrong, sir, but when we were
25 talking about avenues to get to the city council, you said,

1 well, there's other ways to do it. And you said, you could go
2 through the grievance procedure. Did I misunderstand you?

3 A. No, you did not.

4 Q. All right. And this is grievance procedure 15.023, correct?

5 A. That is correct.

6 Q. Now, the grievance procedure has a series of steps to it,
7 right?

8 A. It does.

9 Q. And at each step, the supervisor who is involved at that
10 step is given a certain amount of time to respond to the
11 grievance, correct?

12 A. That's correct.

13 Q. And the phrase that's used throughout this in terms of the
14 amount of time is three workdays or three working days. Do you
15 see that, sir? One example would be on page 59, the very last
16 sentence under 15.023 A, where it says an answer shall be given
17 to the employee within three working days.

18 A. Sir, mine is D. Are you speaking of the -- which supervisor
19 are you speaking of? One of them is three, which would be in

20 B. Is that what you said, or D? Did you say B as in bravo?

21 Q. I said A as an Adam. On page 59 --

22 A. I'm on 59.

23 Q. And do you see Section 15.023 is entitled Procedure For
24 Presentation of a Grievance?

25 A. I've got that, yes.

1 Q. Are we at the same spot? And on subsection A, if you would
2 see the last complete sentence on that page says the supervisor,
3 if not department head status, may contact the department head
4 for advice and counseling. Then it says and an answer shall be
5 given to the employee within three working days. Do you see
6 where that is --

7 A. That is correct.

8 Q. Okay. My question to you is just what does that phrase
9 "three working days" mean under -- under these rules?

10 A. It gives the supervisor time to review the grievance and to
11 give the answer back to the employee within three working days.

12 Q. Okay. And what is the definition of working days, as it
13 appears in this procedure?

14 A. Well, within a fire department, you're going -- you've hit
15 me quite hard there. I guess it's three shifts. That would be
16 probably, what, 24, 48, 72 hours, something like that.

17 Q. So --

18 A. They're working 24-hour shifts.

19 Q. Okay. So I guess I was going to say I understand that, but
20 I'm not sure that I do because as I understand it, at least the
21 rank-and-file employees work shifts that are 24 hours on and 48
22 hours off.

23 A. That is correct.

24 Q. Okay. Now, so three working days, does that mean, you know,
25 if I work on Monday and I have Tuesday and Wednesday off and

1 work on Thursday, Thursday is only day two under this policy?

2 A. Sir, we have different -- it's not a normal eight-hour
3 workday within a city government. A fire department's workday
4 starts at 7:30 one morning and ends at 7:30 the next day.
5 That's -- that's one of their working days. It's a 24-hour
6 day. That's legal by fair labor standards.

7 Q. Okay.

8 A. We have a police department that I've got two different
9 shifts that they work. Some of them may be working -- they're
10 paying them on a 12-hour shift. Some of them may be working
11 four hour -- four ten-hour days. It's their normal workday is
12 what the normal workday is.

13 Q. Okay. Now, just to make sure we have a common understanding
14 on that, today is Wednesday, March 5th, 2008. If an employee
15 raised a grievance under 15.023 A and an employee's on-duty
16 workday is today, Wednesday, March 5th, when would the
17 supervisor be obligated to respond?

18 A. He would have the three working days, sir, just like it
19 says, which would not be the next shift that he was working, but
20 it would have to be given to him the following shift, which
21 would be the third shift. The third rotational shift, sir.

22 MR. STEELE: Okay. Permission to approach, Your Honor.

23 THE COURT: You may.

24 Q. Mr. Roberts, I've handed you a calendar for March 2008,
25 because I think that that might make this all a lot easier for

1 all of us. If a grievance within the fire department is filed
2 by a firefighter who works 24-hour shifts and it's filed on
3 Wednesday, March 8th, 2008, what is your understanding as the
4 date that the supervisor is required to respond?

5 A. You said Wednesday, March 8th. It's Wednesday, the March
6 the 5th. Is that correct?

7 Q. My apology. It's Wednesday, March 5th, 2008.

8 A. If I know how to work their schedule, it's going to be
9 somewhere between the 11th and the 12th. That's going to be
10 about as close as I can get to it.

11 Q. Okay. Well, for the sake of argument, let's say a response
12 is given on the 11th and the employee is dissatisfied with it,
13 so the employee raises it to the next level of supervision, as
14 provided for in 15.023 B. Okay? And there, that supervisor is
15 also allowed three working days to respond. When would that
16 response be due?

17 A. These same -- same figures. You go on farther down the
18 line.

19 Q. So are we saying that it would be due on or around March
20 17th?

21 A. 17th.

22 Q. Okay. And then the step C actually is the department head
23 level, correct?

24 A. That's correct.

25 Q. Okay. And with department heads, they're allowed five

1 working days to respond. Now, within the fire department, does
2 five working days mean 24-on/48-off shifts or is it just
3 Monday through Friday? What separates --

4 A. Sir, when it gets to the department head status and he's on
5 an eight-hour workday, he's got five days to get that back.

6 Q. Okay. And by five working days, does that mean --

7 A. If he works Monday through Friday, he's going to have five
8 working days. If it comes to him on Friday, then he gets four
9 days into the following week, sir.

10 Q. Okay. So if it came to him on the 17th, even if we don't
11 count the 17th, or counting it, all right, we would have the
12 21st of March as when the department head would have for a
13 response; is that correct?

14 A. You said if you did not count the 17th.

15 Q. Well, let me ask you --

16 A. It would give him until the 24th at that time.

17 Q. Let me ask you -- let me ask you this and back up again,
18 because I'm trying to get this right. If the employee appeals
19 to the department head under paragraph C on March 17th, when
20 would the department head's answer or response be due?

21 A. 21 March.

22 Q. 21 March. Okay. And then from the department head, the
23 next level up is the city manager level, correct?

24 A. That's correct.

25 Q. And the city manager, you, sir, are also allowed five

1 working days to respond. So if an employee received a response
2 from the department head on March the 21st and that same day
3 raised the issue to your level, when would your response be due?

4 A. 27 March.

5 Q. 27th of March? So if I'm following you properly, under this
6 grievance procedure, if an employee were to file a grievance on
7 Wednesday, March 5th, and at each step the supervisor took the
8 full allotted time that he or she is entitled to take to respond
9 to the grievance, your response could come as late as March
10 27th?

11 A. That's correct, sir.

12 Q. Okay. Now, in D -- this is the step that's at the city
13 manager level, correct?

14 A. Yes, sir.

15 Q. Okay. After the sentence that provides you with -- as the
16 city manager, with five working days from receipt of the written
17 grievance from the employee to respond, the next sentence says
18 the decision of the city manager shall be final and the employee
19 shall have no further rights of administrative appeal; is that
20 correct?

21 A. That is correct, sir.

22 Q. So if an employee were to follow the grievance procedure as
23 set forth in this provision because the employee wished to speak
24 to the council and the city manager says no, according to this,
25 that's the final step. It's not appealable.

1 A. The final decision is final. They can talk with whomever
2 they want to after that -- that point.

3 Q. So if the issue that's coming up through the chain of
4 command is an employee is asking to speak to the city council
5 and your final decision is no, final and unappealable decision
6 is no, I don't think you should speak to the council on that
7 issue, that's your final decision, the employee is free to
8 disregard that and speak to whoever they wish?

9 A. Let me try to straighten that out. If he's coming up
10 through the chain of command on a fire-related issue, he's going
11 to use his ASOP 12. If he's got a grievance, it's a totally
12 different procedure, sir.

13 Q. Okay. So you don't think the grievance procedure was really
14 applicable in the situation of Mr. Davis wishing to speak to the
15 mayor concerning the ordinance that -- or proposed ordinance
16 pending at the city council?

17 A. That is a work-related issue. It could have been viewed as
18 a grievance. Yes, sir.

19 Q. All right. And had Mr. Davis gone through the grievance
20 process, it would have taken perhaps 22 days to get to the end
21 of that grievance process, give or take?

22 A. That's possible, sir.

23 Q. Okay. And had he chosen that route and was dissatisfied
24 with the answer that you gave, you know, I don't think this is a
25 matter that should go to the city council -- for whatever

1 reason, that was your conclusion as city manager -- under this
2 policy, if he chose that procedure, it's over, right?

3 A. Sir, the -- the grievance is over. The decision is over.
4 He can carry it to whomever he wants after that. It's perfectly
5 legal.

6 Q. So it's your testimony, then -- I just want to make sure we
7 have this clear -- that if you, as city manager, issue a
8 decision to an employee that says, you know, Mr. Davis or
9 Mr. Smith, I am denying your request to speak to the city
10 council about such-and-such issue within the fire department --
11 if you issue that decision and specifically deny him that right
12 in your decision, then he's free to disregard your decision?

13 A. Sir, if his specific request is to speak to the council or
14 if he's speaking about a particular item, if his specific
15 request is to speak to the council, sir, he's going to speak to
16 the council.

17 Q. Even if -- even if you instruct him not to?

18 A. Sir, I just told you my standpoint. If I'm there and he
19 asked to speak to the council, that's my decision that he speaks
20 to the council right by the grievance procedure, sir.

21 Q. So the employee gets up to your level and asks to speak to
22 the council, and you say that he'll get to speak to the council
23 because it's your decision. Is that correct?

24 A. Sir, if he specifically asked to speak to the council, then
25 he's going to speak to the council. If he's speaking on a

1 grievance such as -- let's just say that he's not satisfied with
2 the turnout gear, for instance. And if I make a decision that
3 that piece of turnout gear that we've got is what we're going to
4 use, then that decision is final. But he can still talk with
5 anybody he wants to about it.

6 Q. Okay. Different scenario. The question isn't turnout gear,
7 but the question is -- and the person starts with their
8 first-line supervisor and says, you know, Captain, I'd really
9 like to speak to the council about some issues relating to the
10 fire department. And the captain says no. And then it goes up
11 to the next level, and the employee is told no. And it goes to
12 the fire department; and for some reason, Chief Hunter reviews
13 the situation and determines no, this isn't something that
14 should be aired before the council. And then it's appealed to
15 you and we're at day 22, and you issue a decision that says, no,
16 this isn't something that should be aired before the council.
17 Is the employee completely free to disregard your -- your
18 decision?

19 A. Sir, let me try to clarify that, if I may. If he has gone
20 through his chain of command, he is following ASOP 12. And if
21 he is specifically wanting to talk to the council, ASOP 12
22 states that I will get him there and he will be allowed to talk
23 to the council.

24 Q. Now, ASOP 12 is part of, from your testimony, a
25 firefighter's chain of command, correct?

1 A. Yes, sir. ASOP 12 is a specific set of rules and guidelines
2 for a particular department.

3 Q. Right.

4 A. Each department has them. Each of them are quite different.

5 Q. And it requires an employee, if I understand your
6 interpretation of it, to exhaust the chain of command. Is
7 that -- before talking. Is that correct?

8 A. Yes, sir. Bring it up through the chain.

9 Q. Okay. So here I bring you back, sir, to your answers that
10 you provided during your deposition, whether a firefighter is
11 permitted -- after exhausting the chain of command on an issue
12 affecting the fire department, is he then allowed to address the
13 city council or city council members on that issue.

14 Not by the merit system. I don't think so. No, sir.

15 A. That's exactly what I said. I did not mention anything
16 about ASOP 12. I mentioned about the merit system. And that is
17 my answer.

18 Q. Okay. Does the question mention ASOP 12?

19 A. No, sir. Your question does not mention ASOP 12.

20 Q. Was it your practice during the deposition when you were
21 given questions to only answer in part and not let the person
22 know?

23 A. Sir, I answered the question the way I understood it from
24 the attorney presenting it.

25 Q. You heard this question, and you thought it only applied to

1 the merit system?

2 A. Sir --

3 Q. Is that your testimony today?

4 A. Excuse me. I'll let you finish talking.

5 Q. Right. The question is, you heard that question during your
6 deposition. And are you telling us today that you thought that
7 referred to only the merit system?

8 A. Sir, that's exactly what my answer said.

9 Q. Your answer says what it says. My question is what you
10 understood the question to be. Let me repeat so you know
11 exactly what I'm asking. When you heard this question at your
12 deposition when you were under oath to tell the truth and the
13 whole truth, you thought that question was only asking you
14 whether the merit system allowed the employee --

15 A. In my opinion, it was talking about the merit system. Yes,
16 sir.

17 Q. Did you ever tell Mr. Woodley during the deposition that you
18 were only talking about the merit system?

19 A. I believe, sir, if you'll -- let me get -- get my full
20 deposition out, sir.

21 Q. We could actually move on to another question if you want,
22 but I'll certainly give you the opportunity --

23 THE COURT: Go ahead.

24 A. Oh, go ahead.

25 Q. Okay. And this may clarify it for you. This is from your

1 transcript again at page 85. Well, just so the record is clear,
2 the firefighter pursues the chain of command on an issue
3 affecting the fire department and addresses the city council on
4 that same issue, then he would be subject to discipline,
5 including firing? And your answer was: He could be. Yes.

6 A. That is exactly what I answered, especially if it's going to
7 cause dissension amongst the fire department.

8 Q. So you still retain the authority, if a firefighter goes
9 through the chain of command, to discipline him for speaking to
10 the city council.

11 A. Sir, even a firefighter or anyone in city government has a
12 section of the merit system that applies, which is 2.054. And
13 it fully tells them so they are fully aware of the free speech
14 and the -- what's spelled out, I think, within the
15 Constitution. However, there is four items under there -- and I
16 do not remember them all by heart -- that can cause disharmony
17 or distrust within the workplace or loyalty, some of that thing
18 that can cause disruption or alarm, so to speak, within the
19 department that -- no, sir, that's -- that's not something that
20 we want to try to handle ourself.

21 Q. Okay. So this answer -- let me make sure I understand
22 this. When you gave the answer "not by the merit system," you
23 really, you know, were suggesting, according to you, that
24 there's some other system of getting there. Now, on this
25 answer, when you said he could be disciplined, you were only

1 referring to somebody who creates a big ruckus if they speak to
2 the council.

3 A. Something that is not true or something that is -- brings
4 disharmony or disloyalty. It's spelled in 2.054, sir.

5 Q. So your testimony is even after exhausting the chain of
6 command, if you feel that the firefighter's opinion is something
7 that might cause disharmony or something that you think is not
8 true, he can still be disciplined for going to the city
9 council. Is that --

10 A. If we feel like it violates one of the four items, which
11 could result in insubordination, for instance. Yes, sir.

12 Q. Okay. So the firefighter goes through the chain of command
13 and wants to get to the council, exhausted every step up through
14 and including you, follows ASOP 12, they go to the council on
15 their own risk of being disciplined.

16 A. Sir, if they go up there and tell a lie, for instance,
17 certainly they can be disciplined for it.

18 Q. What if they go to the council and say, you know, Mr. Mayor
19 and city councilors, you've got a proposal before you, and I've
20 got some concerns about it?

21 A. That would be entirely legal, and there would be nothing
22 done to the employee.

23 Q. Okay. And for some reason, sir, you just didn't think
24 that -- when we asked you about these questions during your
25 deposition, you just didn't think that was important enough to

1 tell us?

2 A. Sir, the question is vague. And my answer says it could
3 be. And I believe that's just what I tried to explain, I hope.

4 MR. STEELE: It could be. Yes, it could be. Thank
5 you.

6 THE COURT: Is that all, Mr. Steele?

7 MR. STEELE: Yes, Your Honor.

8 THE COURT: All right. Mr. McKoon?

9 CROSS-EXAMINATION

10 BY MR. MCKOON:

11 Q. Since we're at that spot, Mr. Roberts, let me get a couple
12 things over here. And I'm not going to spend a lot of time on
13 this. I'm going to try to cover it just as quickly as
14 possible. Go back up to page 81 of your deposition. Let's take
15 this, put it back up there. Page 81 is what preceded page 83,
16 and then they've skipped down here to 84 and 85 and so on. And
17 what I want to do is I want to start right up there with
18 question number nine that Mr. Woodley asked you at the time.
19 I'm starting up above where this is.

20 It says: You'll notice Chief Hunter in your memo to you is
21 expressing concerns or actually criticizing Mayor Hardin.
22 You'll see that at the bottom of the first page of the memo
23 where he said, quote, Mayor Hardin should refer any employee
24 violating the chain of command as indicated in our merit system
25 back to the department head, personnel department, or city

1 manager. Failing to do so is a violation of our city charter,
2 end quote. See where it says that?

3 Now, Mr. Woodley is reading from a document prepared by
4 Mr. Hunter; is that correct?

5 A. That's correct.

6 THE COURT: State your objection.

7 MR. STEELE: Objection. Beyond the scope of direct.

8 THE COURT: I think it's leading up to what he was
9 questioned about. I'll overrule.

10 Q. And what was your answer?

11 A. My answer was: I do.

12 Q. And do you agree with the -- with that assessment by Chief
13 Hunter concerning the activities and position of the mayor?

14 And what was your answer?

15 MR. STEELE: Objection. Relevancy.

16 THE COURT: Overruled.

17 A. I feel like the mayor should instruct the firefighter or
18 union president, if it is concerning something to do with any
19 business, to contact me since I was the designated
20 representative for the International Association of Firefighters
21 to contact on city business, which would have -- to me, would
22 have violated the merit system anyway, if he was a firefighter
23 calling. So yes, there was a definite merit system violation.

24 Q. And his next question was: Do you think the mayor violated
25 the merit system rules and regulations?

1 And what was your answer?

2 A. No. I'm saying Mr. Davis did. The mayor is not covered by
3 the merit system.

4 Q. All right. So all of those questions that preceded these
5 questions in regard to what you-all were talking about was the
6 merit system; is that correct?

7 A. Mr. McKoon, that's what I tried to say.

8 Q. All right.

9 A. Yes, sir.

10 Q. And so when -- when you got to this -- this answer about
11 merit system rules and regulations, you said I felt like they
12 would be, yes. Is that correct?

13 A. That's correct.

14 Q. Now, going to page 85 -- and again, he just asked you about
15 this question: Well, just so the record is clear, the
16 firefighter pursues the chain of command on an issue affecting
17 the fire department and addresses the city council on that same
18 issue, then would he be subject to discipline, including
19 firing? And you said: He could be, yes.

20 Is that right?

21 A. That's correct.

22 Q. For instance, if a firefighter, after pursuing the chain of
23 command, went before the city council and said something that
24 was untrue and inflammatory, that caused problems or was meant
25 to cause problems within the department, could he be disciplined

1 for that?

2 A. Yes, sir, he could.

3 Q. Okay. And is -- I mean there's no -- well, that's fine.
4 You've answered it.

5 Now, what I'd like for you to do now -- is there a white
6 exhibit book up there, Mr. --

7 A. Yes, sir.

8 Q. Thank you. If you would, just go to Exhibit #1. Mr. Steele
9 had asked you a series of questions about how long it might take
10 Mr. Davis, in particular, to follow a grievance procedure if he
11 had chosen the grievance route as opposed to ASOP 12. Do you
12 remember that series of questions just a minute ago?

13 A. I do.

14 Q. All right. Would you identify for the jury what this
15 Exhibit #1 is?

16 A. This is a letter from Mr. Thomas Malone, Field
17 Representative, International Association of Firefighters. It's
18 a letter that I sent to Mr. Malone.

19 Q. How did that letter come about?

20 A. I had received a letter from the union concerning the --
21 what they felt was their concerns in a meeting they had had with
22 Chief Prater. And then I talked with the council, and we
23 decided that this was -- that any future -- any future
24 International Association of Firefighters Association business
25 would come through the city manager.

1 Q. All right. And so did you send this letter to Mr. Malone to
2 let him know that if there was a union member or an official of
3 the union that wanted to talk about any -- any union business,
4 they -- the person -- the contact person was you?

5 A. That's exactly what the city council saw fit for us to do,
6 and that's exactly what we did.

7 Q. And so if Mr. Davis wanted to come to somebody about union
8 business and he was the president of the union, you were the
9 person.

10 A. That's correct.

11 Q. And unlike any other firefighter, he could have actually --
12 instead of following either the grievance procedure or ASOP 12,
13 he could have come directly to you; is that correct?

14 A. Yes, sir.

15 Q. All right. Did he do that?

16 A. No, sir.

17 Q. Did he follow ASOP 12?

18 A. No, sir.

19 Q. And did he file a grievance procedure?

20 A. No, sir.

21 Q. All right. Let's talk a little bit about the ordinance
22 process. When a department head makes a proposal or a series of
23 department heads get together and make a proposal that they want
24 passed to amend the merit system or any other thing affecting
25 their particular department at the city of Phenix City, what

1 happens as far as -- how does that come about? Can you explain
2 that process to the jury?

3 A. For an ordinance to come before the council, the usual
4 procedure is the department heads, whether it be one or a series
5 of department heads or if there may be a change in a zoning
6 ordinance as well with the board of zoning, adjustments, and
7 appeals, the ordinance would be drawn up, given to the city
8 clerk. The city clerk will then put it on the agenda, which is
9 published in the paper, and will put it on the work session for
10 explanations and -- or input from the department that edited or
11 put the ordinance together or questions that the council may
12 have.

13 Then the following Tuesday or the next day it is put on
14 first reading. Then it's published again in the paper. Two
15 weeks, we'll have another meeting. The work session -- again,
16 by agenda that's listed in the paper, it will be discussed at
17 the work session. It will be told to the council, this will be
18 the second reading. The ordinance itself will not be read in
19 its entirety at the second meeting like it is the first
20 meeting. And then the council will vote on it and put a date on
21 when that particular ordinance would become a city ordinance.

22 Q. An ordinance of this particular kind, the one that we're
23 talking about here and they've been talking about for three days
24 where we're going to make a change in the merit system rules in
25 regard to a probationary period, is this something that's

1 formulated by the department heads?

2 A. This -- this particular ordinance was formulated by three
3 department heads. The reason for its drafting was the extended
4 time not only as it related to firefighters. Our code
5 enforcement officers go through the Alabama Law Enforcement
6 Training Act and are sworn officers as well, plus they have an
7 extended time to -- where they have to have some technical
8 certifications as well in order for them to maintain their job.
9 With a police officer, the basic training again, along with the
10 code enforcement; that was extended by APOST, Alabama standards
11 that, you know, qualifies your police officers.

12 In order to put a firefighter, a police officer, or a code
13 enforcement officer on the street and have him working and know
14 that he's going to produce, then one year is not a length of
15 time. And once they're put on the street, for instance, you
16 really don't get to be a -- a -- what I would call a journeyman
17 police officer, firefighter, code enforcement officer. You've
18 still got another three to four years of good OJT that you're
19 going to get on the job.

20 Q. Let me stop you for a minute about that and just ask you
21 this. If those people, the police chief, the head of code
22 enforcement, and the fire chief, Chief Hunter, brought that
23 ordinance to the council, does the council pretty much rely on
24 your input and their input in determining whether or not to pass
25 an ordinance of that kind?

1 MR. STEELE: Objection. Relevancy.

2 THE COURT: Yes. I sustain.

3 MR. MCKOON: Okay.

4 Q. At any time when an ordinance comes before the council, can
5 it be tabled?

6 A. Certainly. We have them tabled all the time, sir.

7 Q. All right. And this business about the grievance procedure
8 taking so long, that's the maximum amount of time the procedure
9 can take. Am I right?

10 A. Yes, sir. There again, those time frames are within the
11 time that shift is working. Usually when there's a grievance,
12 it's going to be expedited. They're not going to -- they're
13 going to get the paper in and get it back out and get due
14 process.

15 Q. All right. Did this particular episode with Mr. Davis cause
16 any -- any problems? And specifically, in regard to the mayor
17 and the fire chief.

18 A. Yes, sir, it did.

19 Q. Would you look in your book there and turn to Exhibit #16?
20 Your -- the white exhibit book. Is this a memo that you
21 received from Chief Hunter?

22 A. It is.

23 Q. And just reading through the memo, I'm going to go down to
24 the last part of it. Let's just go to the next -- the last
25 sentence there on the first page where it says, this continued

1 disrespect of the city's policies and procedures from Sergeant
2 Davis has made it very difficult for me to expect other members
3 of the fire department or the city to adhere to any policies and
4 procedures if he's allowed to continue any further with this
5 type of behavior.

6 And then he goes on to say, I also feel very strongly that
7 someone should speak with Mayor Hardin about this sensitive
8 issue of interfering with the job that department heads are
9 trying to do to keep their departments running smoothly and
10 effectively.

11 Did you talk with the mayor about this?

12 A. The mayor and I had some conversations about this, yes.

13 Q. And was that a happy conversation?

14 A. No, sir.

15 Q. What was the result of that conversation?

16 A. Basically, the mayor and the fire chief went for a number
17 of -- number of weeks without speaking.

18 Q. What about -- what about you and the mayor?

19 A. It caused some turmoil with us as well.

20 Q. The city government of Phenix City, as I understand it, is
21 structured so that you run the day-to-day operation; is that
22 correct?

23 A. That's -- that's correct.

24 Q. And from time to time -- and let me ask you this. Why is
25 that? Why have -- if you know, why is the charter structured in

1 such a way that there's a strong city manager and a
2 mayor/council off to the side?

3 MR. STEELE: Objection. Relevancy, and beyond the
4 scope of direct.

5 THE COURT: Yes. I sustain.

6 MR. MCKOON: Okay.

7 Q. Oh, I almost forgot. You -- going back to Mr. Taylorson
8 just very briefly, turn to page 47 of your deposition. By the
9 way, how long have you been in the National Guard?

10 A. I'm retired. I was in 41 years and eight months.

11 Q. When did you get out?

12 A. This coming June I'll be -- will be two years.

13 Q. When this conversation took place with Mr. Taylorson, was he
14 still -- was he a captain then or a sergeant then, or do you
15 know?

16 A. With the fire department?

17 Q. Yeah. With the fire department.

18 A. I would assume to have been a -- he was a sergeant then. He
19 was a driver engineer.

20 Q. All right. If you would, just go to page 47, line ten, and
21 we want to get your full answer there. My question was: When
22 you say not in the manner, why? What do you mean by that?

23 And what was your answer?

24 A. I investigate his concerns (sic). I asked him how things
25 were going in the fire department. I think when you do that,

1 you open the door.

2 Q. All right. So what you were being asked is whether or not
3 he had violated the merit system by talking to you; is that
4 right?

5 A. That's exactly right.

6 Q. And what you said was I instigated the conversation. I
7 asked him not just how things were going, but you asked him how
8 things were going at the fire department; isn't that right?

9 A. That's correct.

10 Q. All right. And like you said, that's not unusual for you to
11 do, is it?

12 A. No, sir. It's done on a daily basis.

13 Q. I believe you've also served as a deputy sheriff previously.

14 A. I have.

15 Q. And are you still certified as a law enforcement officer?

16 A. I am.

17 Q. Are you familiar, then, with the chain of command?

18 A. Yes, sir.

19 Q. And why -- why is that important in a paramilitary
20 organization, such as a fire department or a police department?

21 MR. STEELE: Your Honor, I would object to the question
22 from the standpoint of trying to equate the chain of command
23 within the fire department to the city manager's experience with
24 the National Guard.

25 THE COURT: Yes. I sustain. Limit it to the activity

1 on the fire department.

2 MR. MCKOON: Okay.

3 Q. Do you know why it's important -- the chain of command is
4 important in a fire department?

5 A. A chain of command is important to instill discipline. It
6 will also provide you a smooth flow of information, whether it
7 be from the bottom up or from the top down. It will ensure that
8 the individual, whether it be a -- the lowest ranking member or
9 the highest ranking member, has a -- a knowledge of what's going
10 on, whether it be mission-oriented or training-oriented or just
11 general procedures of what you have to do within a given
12 environment.

13 Q. Just one last question, I guess, for now. And that is how
14 long have you worked for the City of Phenix City?

15 A. Thirty-five years.

16 Q. And you started out as what?

17 A. An electrical inspector.

18 MR. MCKOON: That's all.

19 THE COURT: Any redirect?

20 MR. STEELE: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. STEELE:

23 Q. Mr. Roberts, I'm going to promise this is the last time I'm
24 going to hold up this page 83 and 84 to you; but I think that
25 when we read it last time, that I skipped over one of your

1 answers. And I want to make sure that we've got that complete.
2 In reference to the question of whether a firefighter, after
3 exhausting the chain of command, would be violating the merit
4 system rules and regulations, your answer here is that it would
5 be violating both the language and the spirit of the rules and
6 regulations; is that correct? And this is on page 83. I know
7 you have it in front of you. I don't mean to make you answer
8 until you look at it.

9 A. Okay.

10 Q. And if you could see your answer at page 84, line 11.

11 A. Yes, sir. I see my answer. It's just as it says there.

12 Not by the merit system. I do not think so. I don't think so.

13 No, sir.

14 Q. Asking, actually, here to look at these questions and
15 answers where you were asked if a firefighter, after exhausting
16 the chain, would be violating the merit system rules and
17 regulations. And you said: I think it would be violating the
18 intent of the merit system rules and regulations. And then to
19 narrow -- to make sure we covered the bases so we didn't leave
20 anything out for you, it said: Would he be violating the
21 language of the merit system rules and regulations? And your
22 answer is: I feel like they would be, yes.

23 Do you see that?

24 A. Yes, sir, I do.

25 Q. In answering either of these questions, did you really --

1 did you ever say it could be, but maybe not?

2 A. I never said that in that deposition, no.

3 Q. Now, with respect to the ordinance proposal process, you,
4 sir, as you sit here today, have no personal knowledge that
5 Mr. Davis ever saw the actual proposed ordinance that we've been
6 talking about these past several days on the probationary
7 period. You, sir, have no personal knowledge that Mr. Davis
8 ever saw that ordinance prior to the 16th of April in 2006; is
9 that correct?

10 A. Sir, I don't have any personal knowledge of what he saw and
11 what he didn't see. I know the ordinance was published.

12 Q. Your answer is you don't have personal knowledge of what he
13 saw and when he saw it?

14 A. I do not.

15 Q. It's not the practice of the city if there's an ordinance
16 that affects, say, the fire department and the police department
17 to send copies of the proposed ordinance to all of the
18 firefighters and police officers, correct?

19 A. No, sir. That's not a policy.

20 Q. Okay. Now, you indicated in response to one of Mr. McKoon's
21 questions on, you know, whether it was possible that a proposed
22 ordinance before the city council could get tabled. Do you
23 remember that question?

24 A. I do.

25 Q. And you said yes, things get tabled all the time, correct?

1 A. Yes.

2 Q. As city manager of the City of Phenix City, you, sir, have
3 no authority to table a measure before the city council; isn't
4 that correct?

5 A. No, sir. But I've asked for measures to be tabled before,
6 and they have been.

7 Q. Because the city council chose to, correct?

8 A. It's entirely their option, sir.

9 Q. It's entirely their option. Thank you.

10 Now, you know, Mr. Davis has been accused of a lot of
11 things, but I have to say this is pretty interesting what you
12 said in response to Mr. McKoon's questions. Chief Hunter felt
13 to take it upon himself in a letter to chastise the mayor
14 because the chief felt that he had a better understanding of the
15 merit system rules than the mayor does. And somehow you're
16 sitting up here today and saying that's Mr. Davis's fault.
17 Mr. Davis didn't chastise the mayor as violating the merit
18 system rules.

19 MR. MCKOON: Judge, objection.

20 THE COURT: Is that a question?

21 MR. MCKOON: I don't understand that question or
22 whatever it was, statement.

23 THE COURT: Yes. I sustain.

24 Q. All right. Well, turn, if you would, to Exhibit #16 that
25 you testified about. Are you with me, sir?

1 A. I'm with you.

2 Q. Okay. And Exhibit #16 was a memo to you as city manager
3 from Chief Hunter on April 20th, 2006. Do you see that?

4 A. I do.

5 Q. And in response to questions by Mr. McKoon as to whether
6 Mr. Davis's phone call created harm somehow, you explained as an
7 example that, gee, you know, the chief and the mayor didn't
8 speak for how long?

9 A. Several weeks.

10 Q. For several weeks, the chief and the mayor didn't speak.
11 And what I'm suggesting to you, sir, is you may be able to
12 accuse Mr. Davis of some things. Mr. Davis didn't draft this
13 document, did he, sir?

14 A. No, sir, but --

15 Q. Mr. Davis did not take it upon himself to chastise the
16 mayor, did he, sir?

17 A. No, sir.

18 Q. And the conflict between the mayor and the chief is because
19 they had -- the mayor did not appreciate the chief's
20 chastisement in his letter to you. Is that fair, sir?

21 A. No, sir, that's not fair.

22 Q. Well, what was the problem between --

23 A. The item that came that caused this was failure to follow
24 the chain of command that broke discipline within that fire
25 department.

1 Q. So your testimony wasn't that there was a problem between
2 the two of them because Chief Hunter pointed out that he thought
3 the mayor had violated the merit system rules?

4 A. Sir, the foundation of that problem is what I have just
5 stated, where someone failed to follow the proper procedure.

6 Q. I see. So if Mr. Davis chose -- if Mr. Davis violated a
7 proper procedure but never once chastised the mayor or the fire
8 chief, for that matter, and for some reason the fire chief
9 thinks that the mayor did something wrong and the fire chief
10 chastises the mayor, even though he's above even you, somehow
11 that's still Mr. Davis's fault?

12 A. Sir, as I said, the foundation was set. And that's the
13 reason for the letter.

14 Q. Now, one more question for you. This is, again, in the
15 white notebook. You were asked about Exhibit #1. And Exhibit
16 #1 is this letter from you to Mr. Malone concerning contacts
17 between union officials and the city, correct?

18 A. That's correct.

19 Q. Now, you didn't send this letter to Mr. Davis, did you?

20 A. No, sir.

21 Q. And you addressed it to Mr. Malone. And if you look at the
22 bottom of the letter, there's a bunch of names or indications
23 after the cc, which I take it means copy was sent to, correct?

24 A. That's exactly what it means, sir.

25 Q. So you sent a copy to the city council, a copy to the city

1 attorney, a copy to the fire chief at the time, to personnel,
2 and to file; is that correct?

3 A. Yes, sir.

4 Q. You didn't send a copy to Mr. Davis, did you?

5 A. No, sir, I didn't send a copy to Mr. Davis.

6 Q. And in fact, as you sit here today, you have no personal
7 knowledge of whether Mr. Davis ever saw or knew of this letter
8 prior to his termination, do you?

9 A. No, sir. I don't have any personal knowledge. But I know
10 if a good representative is there, he's going to put that
11 back -- write that down to the union member.

12 Q. You have no personal knowledge, correct?

13 A. No personal knowledge.

14 MR. STEELE: Thank you.

15 MR. MCKOON: Judge, I don't have anything else.

16 THE COURT: Is that all?

17 MR. MCKOON: Thank you.

18 THE COURT: You can come down, Mr. Roberts.

19 THE WITNESS: Thank you.

20 THE COURT: Next witness?

21 MR. BROWN: Your Honor, we would like to call
22 Ms. Audrey Thomasson. She is visually impaired and will need
23 someone to sort of help her navigate.

24 (Brief pause)

25 THE CLERK: Would you raise your right hand, please.

1 (The witness is sworn)

2 THE CLERK: You may be seated.

3 **AUDREY THOMASSON**, the witness, having been duly sworn,
4 testified, as follows:

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q. Good afternoon, Ms. Thomasson. Would you please state your
8 legal name for the record, please?

9 A. Audrey Thomasson.

10 Q. And where do you reside, Ms. Thomasson?

11 A. 4404 Linda Drive, Phenix City, Alabama.

12 Q. How long have you lived there, Ms. Thomasson?

13 A. Thirty-one years this month.

14 Q. And what's your occupation, please, ma'am?

15 A. I retired from Members Alliance Federal Credit Union with 35
16 years in April 21st of 2006.

17 Q. And do you have children?

18 A. I have two children, one boy and one girl.

19 Q. And do you have any grandchildren?

20 A. I have four grandchildren.

21 Q. Okay. And is one of those grandchildren here in the
22 courtroom today?

23 A. Yes, sir. David Davis.

24 Q. Okay. Just wanted to establish for the jury who you were,
25 please, ma'am. Would you please describe for me, Ms. Davis

1 (sic), how you would characterize your relationship with your
2 grandson?

3 A. We have always been extremely close. In fact, I brought him
4 home from the hospital with his mother, as his dad was on duty
5 at Fort Benning, and he's always lived close by. And we've
6 always had an extremely close relationship, not only as my
7 grandson and I'm his grandmother, but we're just good friends.

8 Q. How often do you normally talk with him?

9 A. We talk on the phone two to three times a week. We often
10 get to see each other weekly and sometimes every two weeks or
11 so, due to his schedule.

12 Q. And for how long have you enjoyed a relationship of that
13 nature with your grandson?

14 A. All his life.

15 Q. How would you have described his way of approaching life and
16 activities prior to his being terminated at the fire department?

17 A. David was so excited. His whole dream was to be a fireman
18 in Phenix City where he had grew up. And that was his
19 hometown. And he has such a zest for life, for his job. His
20 dream was to be a fireman; and he worked very, very hard to
21 educate himself to become a fireman.

22 Once he became a fireman, he further went on to work very,
23 very hard to further his education. At 21 years old, his dad
24 walked out and left him. He worked very, very hard from there
25 on as he wanted to not only get an education to be a fireman, he

1 wanted to further his education. Because he knew that in order
2 to be the very best fireman that he could be and do the very
3 best that he could be on his job, he knew that education was
4 very, very important.

5 And he -- when he got to work at the fire department, David
6 had a very deep dedication and such pride in his job, because he
7 was raised by his mom to -- to stand on his own two feet, to be
8 independent, do his very best at anything that he did and stand
9 for what he believed in. And he -- I always felt to be such a
10 young man, he did very, very well.

11 Q. And how did you learn of the plaintiff's termination from
12 the fire department?

13 A. He was fired on the same day of April the 21st, 2006, the
14 same day I retired from my job. And I had gone out of town to
15 be with my sister and brother in Dothan, Alabama, and to
16 celebrate my retirement, because I was pretty excited about it.
17 And I come home on a Sunday afternoon, and I called David, as I
18 always did, all the family, to let them know that I was home
19 safely. And in talking with David, I told him granny was home
20 safe. And then I said, how are you, darling? And he said,
21 Granny, I'm not so good. He said they called me in today, and
22 they have fired me. And we didn't talk much further, because I
23 could tell that David was emotionally -- very emotionally upset
24 at that time. So we didn't discuss a lot at that time.

25 Q. And have you observed any changes in his behavior, his way

1 of living, since his termination?

2 A. Yes, sir. The glow, the joy, and the light of him was
3 just -- had just gone out. He was very depressed. He was
4 emotionally distressed, and to the point that when the family
5 got together, David just wasn't the joyous person. He was very,
6 very quiet. Sometimes he would just be so irritable, depressed
7 that not only did he suffer of what he had gone through, but the
8 whole family, we were just really disturbed and depressed also.
9 But I saw such a change in him.

10 And in discussing and talking with David on occasions, he
11 would often say, well, Granny, it doesn't matter anymore.
12 Nothing matters. They have took away my dream, the dream that I
13 dreamed of being a fireman in Phenix City where I grew up, and
14 that I wanted to be the very best fireman I could be. And in me
15 knowing and watching over the years how he had worked so hard, I
16 could really relate to him being so discouraged and so
17 disappointed. And we would be riding around in Phenix City, and
18 he would see the fire trucks or maybe the fire hydrants that
19 many times he had had to paint, and he would make a comment that
20 how sad it made him feel.

21 When he began working with the Care Ambulance Service -- and
22 we were thankful that he found a job, because he needed a job to
23 pay his bills, as we all do. And each time that he would go on
24 a call when they have a 911 call and he would go out on a call,
25 the ambulance would be there as well as the fire department.

1 And he'd often tell me, Granny, it just hurts me so bad to see
2 the fire truck there and I can't be with them and can't be on
3 the fire truck. All I have ever wanted was just to be a fireman
4 here in Phenix City. He's always said that, and he says that
5 till this very day that that's all he really wants to do is be
6 the best fireman Phenix City has ever had, that the citizens
7 could be proud of him because he would give them his very best.

8 And I believe in my heart that David does his very best on
9 the job that he's on now because he's that type of a person.
10 Every job that David's ever had, other than the problem he's had
11 with Phenix City Fire Department, he has always had people that
12 said high -- good comments about him. They did not want him to
13 leave. And I feel like that, as I say, he's done his best, but
14 he's lost the pride that he once had. There's just -- there's
15 something missing there. He's just not the same. And it's
16 really brought him down, and it's brought the family down in
17 general. It really has.

18 MR. BROWN: Thank you. I have no further questions.

19 THE COURT: Mr. McKoon?

20 MR. MCKOON: I don't have anything for this witness,
21 Your Honor. Thank you.

22 THE COURT: All right. Ms. Thomasson, you may come
23 down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Let's take a short recess at this time

1 before we go. We're going to take ten minutes. And members of
2 the jury, be ready to come back in and start the trial back at
3 ten minutes till three.

4 Let me see lead counsel up here just a minute.

5 (Bench conference held off the record)

6 (Recess at 2:41 p.m. until 2:52 p.m., at which time
7 proceedings reconvened with the jury present, as follows:)

8 THE CLERK: Court is in session. You may be seated.

9 THE COURT: Mr. Steele, call your next witness.

10 MR. STEELE: We call Brenda Davis, Your Honor.

11 THE CLERK: Would you raise your right hand.

12 (The witness is sworn)

13 THE CLERK: Be seated.

14 **BRENDA DAVIS**, the witness, having been duly sworn,
15 testified, as follows:

16 DIRECT EXAMINATION

17 BY MR. STEELE:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. Will you please state your name for the record.

21 A. I'm Brenda Davis.

22 Q. And you are Mr. Davis's wife, correct?

23 A. Correct.

24 Q. Would you just tell the jury how long you've known
25 Mr. Davis?

1 A. Almost eight years.

2 Q. And how long have you been married?

3 A. About four and a half years.

4 Q. I understand you have dogs. We heard that earlier.

5 A. Yeah. Those are our children.

6 Q. You got points from me for that one. I'm going to ask you a
7 couple of questions about your observations of your husband
8 relating to his employment and loss of employment with Phenix
9 City. And from your perspective as Mr. Davis's wife, can you
10 tell us your observations of what his job with Phenix City meant
11 to him?

12 A. His job with Phenix City Fire Department as a firefighter
13 meant everything to him. He was very dedicated. He never
14 missed work. He loved going to work. He would go to work early
15 because he liked it so much. He never called out sick. He was
16 never late. He went to every class. Any opportunity he had to
17 improve himself with the fire department, any class, anything,
18 he always went. It just meant the world to him.

19 Q. And please tell the jury your observations as to how the
20 loss of that job and the circumstances affected your husband.

21 A. Well, for one thing, it was a surprise to him. It took him
22 by a very big surprise. He wasn't expecting it at all because,
23 you know, he was such a good employee. He -- since he was
24 fired, from that time forward, I've noticed him decline. His --
25 he's been depressed. Can't sleep. He doesn't get any enjoyment

1 out of life anymore. And our marriage has suffered.

2 MR. STEELE: I know this is difficult. Actually, no
3 further questions.

4 THE COURT: Any cross-examination?

5 MR. MCKOON: Just a few.

6 CROSS-EXAMINATION

7 BY MR. MCKOON:

8 Q. Ms. Davis, just during the time that your husband was with
9 the fire department, particularly calling your attention to the
10 year 2005 and early 2006, were you aware that he had some other
11 disciplinary actions taken against him prior to the time he was
12 terminated?

13 MR. STEELE: Objection. Beyond the scope, Your Honor.

14 THE COURT: I think it's in response to one of her
15 answers. Overruled.

16 A. Was I aware of him being --

17 Q. Disciplined for any other thing before he was fired from the
18 police -- I mean from the fire department.

19 A. I remember a couple of times that he was -- he had said that
20 he had been written up.

21 Q. Do you know what those involved?

22 A. No, sir. I don't recall.

23 Q. Do you know how long ago that was before he was actually
24 terminated?

25 A. No, sir. I don't recall.

1 Q. When he -- well, did he discuss those with you in any
2 detail?

3 A. No, he did not.

4 Q. So he just said I've been written up, and that was it?

5 A. To that fact that he was written up and he -- you know, of
6 course, he didn't --

7 Q. He didn't think it was justified, did he?

8 A. Exactly.

9 Q. And what do you do?

10 A. I'm a registered nurse.

11 Q. And where do you work?

12 A. I'm at East Alabama Medical Center.

13 Q. What -- what type of nursing do you do?

14 A. I work in ICU.

15 Q. Is all you know about David's life on the job what he would
16 have told you?

17 A. Yes, sir.

18 MR. MCKOON: That's all I have.

19 THE COURT: Mr. Steele?

20 REDIRECT EXAMINATION

21 BY MR. STEELE:

22 Q. Ms. Davis, in addition to anything that your husband may
23 have told you about his life on the job, as his wife, weren't
24 you in a position to observe personally how his job and his loss
25 of that job affected him?

1 MR. MCKOON: That's been -- that's been asked and
2 answered.

3 MR. STEELE: It's in response to your --

4 THE COURT: I'll allow the question in response to the
5 examination.

6 Go ahead. You can answer.

7 A. Yes.

8 Q. So the testimony that you gave isn't just based upon what
9 David has told you, but it's based upon your --

10 A. What I've seen him go through. Yes.

11 MR. STEELE: Thank you.

12 THE COURT: You can come down, Ms. Davis.

13 THE WITNESS: Okay.

14 THE COURT: Call your next witness, Mr. Steele.

15 MR. STEELE: Your Honor, at this point, we would rest
16 our case in chief and would like to state a motion for the
17 record that has to be done outside of the presence of the jury.

18 THE COURT: All right. The plaintiff rests.

19 Members of the jury, I'm going to have to ask you to
20 step out again. This won't take long. Just step out and be
21 ready to come back in in a few minutes.

22 (Jury out at 2:59 p.m.)

23 THE COURT: All right. Mr. Steele?

24 MR. STEELE: First of all, I apologize. We could have
25 actually handled that at sidebar. I didn't intend to make the

1 jury leave the room. We want to preserve for the record and
2 make a motion for judgment as a matter of law in this case. I
3 anticipate that you may not be ruling on that now, but we want
4 to get that on the record and have that reflected.

5 THE COURT: All right. Fine. The record will show
6 your motion, and I'll defer it.

7 MR. STEELE: Thank you, Your Honor.

8 MR. MCKOON: Judge, we would have the same motion.

9 THE COURT: All right.

10 MR. MCKOON: Judgment as a matter of law. And what we
11 would like to do, if it's all right with the Court, is just
12 bring something on that in the morning.

13 THE COURT: Well, you can bring it in the morning, and
14 I'll hear it when I can. But I'll defer.

15 All right. Bring the jury back in.

16 Are you ready to proceed?

17 MR. MCKOON: Yes, sir, Judge. I will tell you, I have
18 one witness here that I believe will take about 30 minutes. The
19 only other witness I have is not available right now.

20 THE COURT: Well, get somebody else here then.

21 MR. MCKOON: All right.

22 (Jury in at 3:00 p.m.)

23 THE COURT: Be seated.

24 All right. The defendants have rested and it's now --
25 I mean the plaintiff. And it's now time for the defendants to

1 go forward.

2 Mr. McKoon, call your first witness.

3 MR. MCKOON: Yes. Judge, at this time, I would call
4 Barbara Goodwin.

5 THE CLERK: Would you raise your right hand, please.

6 (The witness is sworn)

7 THE CLERK: Be seated.

8 **BARBARA GOODWIN**, the witness, having been duly sworn,
9 testified, as follows:

10 DIRECT EXAMINATION

11 BY MR. MCKOON:

12 Q. State your name for the record, please, ma'am.

13 A. Barbara Goodwin.

14 Q. And are you employed somewhere, Ms. Goodwin?

15 A. With the City of Phenix City.

16 Q. How long have you been with the city?

17 A. Eighteen years.

18 Q. And what is your position there?

19 A. Personnel director.

20 Q. As personnel director, do you keep custody of the personnel
21 files of employees of the City of Phenix City?

22 A. I do.

23 Q. And as part of your job, did I ask you to look in a -- in a
24 particular personnel file to get some information for this
25 Court?

1 A. You did.

2 Q. All right. And do you have the personnel file here today of
3 Todd Boatner?

4 A. I do.

5 Q. Would you just tell the Court and the jury the date that
6 Todd Boatner retired?

7 A. December 3rd, 2004.

8 MR. MCKOON: That's all the questions I have.

9 THE COURT: Mr. Steele?

10 MR. BROWN: Excuse me. What was your answer?

11 THE COURT: Mr. Brown.

12 THE WITNESS: I'm sorry?

13 MR. BROWN: Might you please state your answer to the
14 last question that Mr. --

15 THE WITNESS: The date?

16 MR. BROWN: Yes.

17 THE WITNESS: December 3rd, 2004.

18 CROSS-EXAMINATION

19 BY MR. BROWN:

20 Q. Okay. Ms. Goodwin, do you happen to know whether a
21 retirement party for Mr. Boatner was held?

22 A. I do not know.

23 Q. Did you say you wouldn't have any idea of whether or not --
24 what date it was on?

25 A. No, sir.

1 Q. Would you happen to have any personal knowledge whether the
2 mayor of the city of Phenix City might have gone to -- or
3 mayor-elect -- gone to such a retirement party?

4 A. I do not.

5 MR. BROWN: Thank you. I have no further questions.

6 MR. MCKOON: May she be excused, Your Honor?

7 THE COURT: All right. Yes. You may be excused.

8 You're free to go.

9 THE WITNESS: Thank you.

10 THE COURT: Next witness?

11 MR. MCKOON: We call Roy Waters.

12 THE CLERK: Would you raise your right hand.

13 (The witness is sworn)

14 THE CLERK: Be seated.

15 **ROLAND LEROY WATERS**, the witness, having been duly
16 sworn, testified, as follows:

17 DIRECT EXAMINATION

18 BY MR. MCKOON:

19 Q. State your name for the record, please, sir.

20 A. Roland Leroy Waters.

21 Q. Where do you reside currently?

22 A. In Phenix City.

23 Q. And prior to 2005, I guess, where were you employed?

24 A. The Columbus Department of Fire and Emergency Medical
25 Services, Columbus, Georgia.

1 Q. And Mr. Waters, if you would, speak up just a little bit.

2 And what was your employment over there?

3 A. I was employed from 1973 until November 30th, 2005.

4 Q. And in what capacity?

5 A. I retired as the chief of the department, but I started out
6 as a firefighter and was promoted to sergeant, to lieutenant, to
7 captain, to deputy chief, interim chief, and then chief.

8 Q. How long did you serve as fire chief?

9 A. About eight years.

10 Q. What size department is Columbus, Georgia's department?

11 A. When I retired, 394 personnel.

12 Q. At some point in time prior to or right after -- or right
13 around the time of your retirement, did you get any contact from
14 Chief Wallace Hunter of the Phenix City Fire Department?

15 A. Yes, sir. Chief Hunter and I talked about my retirement and
16 the possibility of coming to work for Phenix City.

17 Q. And what was the nature of the conversation, if you recall?

18 A. Basically, he just thought that the department needed a
19 different perspective, maybe, a new set of eyes. He was aware
20 of what I had accomplished in Columbus. And I taught at
21 Chattahoochee Valley Community College for a number of years;
22 and he thought I could bring some new ideas, I guess, to
23 training and maybe enhance the training in Phenix City and, you
24 know, take care of some problems that they had in the
25 department.

1 Q. And did you agree to come on to the Phenix City Fire
2 Department?

3 A. Yes, sir, I did.

4 Q. And in what capacity did you join the department?

5 A. As deputy chief.

6 Q. And what were you in charge of?

7 A. Operations.

8 Q. Now, what does that mean?

9 A. The emergency response part of the fire department.

10 Q. I'm sorry?

11 A. The emergency response part of the fire department.

12 Day-to-day operations.

13 Q. Okay. How many fire stations does Phenix City have?

14 A. Three.

15 Q. And approximately how many personnel?

16 A. In operations, I believe at that time it was approximately
17 50, probably.

18 Q. When you came to Phenix City, did you know when you were
19 coming that you were coming to a department that, for lack of a
20 better term, was troubled?

21 A. I knew there was going to be some challenges. Yes, sir.

22 Q. And what did you find when you got there?

23 A. The -- the tension was pretty thick for the people in the
24 field. There was -- they were pretty suspicious of everything.
25 There appeared to be, from their standpoint -- because I had

1 several meetings with all the personnel -- a lack of
2 communication and a lack of training or maybe not as much
3 training as they should have had, but issues with morale,
4 typical issues that, I'll be honest with you, you're going to
5 find in any fire department you go to, in my opinion.

6 Q. And I don't know if I asked this or not, but when did you
7 join the department?

8 A. In Phenix City?

9 Q. Yes, sir.

10 A. I believe the date was December the 19th, 2005.

11 Q. When you got there and assessed the situation, what -- what
12 action did you take in regard to your activities as deputy
13 chief?

14 A. I had --

15 MR. BROWN: Objection, Your Honor. Relevance to the
16 plaintiff's claims in this case, please, sir.

17 THE COURT: All right. And the relevance?

18 MR. MCKOON: I expect him to testify that he instituted
19 some changes, which included communications with the plaintiff.

20 THE COURT: All right. Overruled.

21 Q. Go right ahead.

22 A. Would you repeat that question again, please, sir?

23 Q. What thing -- what did you do when you came to the
24 department in regard to like the problems you were just talking
25 about with communication?

1 A. The first thing, we had meetings during the week. And I
2 asked all of the personnel to give me their side, what they
3 thought the problems were in the department and what it would
4 take to correct it and to open up the lines of communication,
5 which basically they said were somewhat restricted. And the
6 changes that -- or the problems that they brought to my
7 attention, a lot of them could be taken care of at my level.
8 Some of them were taken to the chief to -- to get corrected.
9 But everybody -- we -- we really tried to get everybody's
10 inclusion into what was going on at the department and gave them
11 an opportunity to communicate with -- with everybody. And the
12 lines of communication were definitely opened up. I can tell
13 you.

14 Q. Did you conduct training meetings?

15 A. Yes, sir. I clearly communicated to everybody what I
16 thought was important to get the department back on track. I
17 also communicated that -- what my expectations were to everybody
18 on a daily basis. I also opened up every meeting with do you
19 have any problems, do you have any suggestions or
20 recommendations or criticisms or problems or anything, every
21 day. And --

22 Q. All right. Let me stop you there just a minute. Would
23 Mr. Davis have been at these meetings?

24 A. Yes, sir.

25 Q. And when you say there were three -- I'm having a problem

1 understanding. There's three fire stations.

2 A. Yes, sir.

3 Q. Where -- how would you meet on kind of a daily basis with
4 everybody?

5 A. Chief Hunter allowed me to bring everyone together. We --
6 we met consistently in the afternoon around one o'clock each
7 day. And he allowed me to bring all of them together at the
8 same time.

9 Q. Where would that be?

10 A. At -- initially, it was at station one. And then he was
11 able to get a training center opened up, and then the classes
12 were relocated to the training center.

13 Q. And so you -- you told about how you would open the
14 meetings, about communicating with people and all that. Did you
15 even invite people to come to your house if they had a problem?

16 A. Yes.

17 MR. BROWN: Objection. Relevance, Your Honor.

18 THE COURT: I think it's relevant to show the general
19 condition there when the actions took place to put everything in
20 context. Overruled.

21 A. Yes, sir.

22 Q. Go ahead.

23 A. What I did was when I'd ask if they -- if anybody had any
24 problems or suggestions or criticisms or anything, because there
25 was -- as I told you earlier, there was a lot of people that

1 were very suspicious, reluctant to speak -- speak out or
2 whatever. So I told them, I said, if you have any problems, if
3 you don't want to talk to me here, I said, you can come to my
4 house. I only live like a couple miles from my office and, I
5 said, I'll be glad to talk to you there. Because my whole
6 objective was to get people talking to each other and getting
7 some of these issues resolved. So they had -- they had every
8 opportunity to come and talk to me and meet with me. And I
9 first got the chief's permission to do this so everybody would
10 know that I was -- you know, the chain of command was not going
11 to be compromised at any time.

12 Q. Did Mr. Davis take you up on your offer?

13 A. To come to my house?

14 Q. No. To come to your office.

15 A. Oh, yes, sir. On two different occasions. The first
16 occasion when I first got there, he let me know he had gone
17 through the chain of command and wanted to let me know he was
18 the president of the union. And basically, he hoped we could
19 work together. It was a very short meeting. And I think my
20 comment was that, you know, as long as everybody does their job,
21 we won't have a problem.

22 And then there was one other occasion when his assistant
23 chief came to me and said that there was a problem on his
24 shift. And he had met with Mr. Davis and that he wanted to meet
25 with me and that he -- this is what his chief said. His chief

1 told me that he had gone through the chain of command. We met
2 in my office for a few minutes. I don't even remember what it
3 was about. I don't think it was anything of any significance,
4 but it was resolved before the day was out, in my opinion.

5 Q. As far as you know, as far as his daily skills as a
6 firefighter, was he good at that?

7 A. Yes, sir.

8 Q. At some point in time, did this issue come up regarding the
9 extension of the probationary period?

10 A. Yes, sir. Chief Hunter had talked to me about it and said
11 that more than likely, the city was going to go for I believe
12 the firefighters and the police officers and code enforcement
13 and change it from 12 months to 18 months, which is pretty
14 consistent throughout the United States. And I started to -- in
15 the daily meetings we had, I brought it up that it would change
16 from 12 to 18 months. And everybody was told that it would not
17 impact anybody that was currently working. It would only be for
18 new employees. And it had nothing to do with promotions.

19 And after I did, then Chief Hunter even came in and told
20 them. And only two people, to my knowledge, brought up a
21 question. And it was two of the firefighters currently employed
22 that I believe their probation was going to end like at the end
23 of June or something. And they wanted to know from the chief,
24 well, does this impact us. He said no. It's only for new
25 employees. And there was no other discussion.

1 Q. Did Mr. Davis ever raise that issue with you?

2 A. No, sir, not to my recollection. He did not.

3 Q. Was there any uproar or objection about it among the people
4 that were veteran firefighters?

5 A. No, sir. If they did, they did not talk to me about it.

6 And the reason, I think, is because it was a nonissue. It was
7 not important. It didn't have any impact on anybody in a
8 negative way. In fact, in my opinion, it was like an insurance
9 policy. And I clearly used that same phrase when I was talking
10 to the people in the department because firefighters today are
11 required to know so much more. Their certifications, their
12 training is longer than it ever has been. And to increase it by
13 six months gives them a lot of breathing room, because they're
14 trying to push so much into a small amount of time. So they're
15 not up under nearly as much pressure with it going from 12 to 18
16 months as having just a 12-month probationary period. It's the
17 best thing that a department could do anywhere.

18 Q. As the time got closer, I guess, for the policy to be
19 implemented, did you have anything to do with -- with that in
20 any way?

21 A. No, sir. I think that when the final draft was -- I guess
22 when it was prepared, that's when Chief Hunter came out and went
23 over it with the people in the field. And like I said, only two
24 people had -- two firefighters had a concern, because they
25 thought that it may impact them, but it did not. And that was

1 clearly communicated earlier on by myself.

2 Q. All right. Now, you had come in, I believe, in December;
3 and this happened, this issue that we've been here about three
4 days, happened around April, wasn't it?

5 A. Yes, sir. I believe that's correct.

6 Q. In that period of time, were things gradually getting better
7 in the department?

8 A. In my opinion, yes, sir. I think that by that time, people
9 were talking to each other. When I first came there, I mean
10 they weren't hardly talking to each other. And when they did,
11 everybody would talk -- calling people by their last names and
12 stuff like -- it was very impersonal. And when I left -- and no
13 one came to work with a smile on their face hardly at all.

14 When I left, people were coming to work with a smile on
15 their face. I mean it was just completely changed. The
16 department had been transformed; and I think that it was a
17 top-performing department, to be honest with you. I mean I'm
18 not going to say it was problem-free; but I can tell you from
19 what I first started till then, a lot of things were
20 accomplished. And it wasn't because of me, necessarily. I
21 think it was because of what the chief was allowing me to do
22 through the personnel that was working.

23 Q. When you would have these talks with people on a daily basis
24 and invite them to share their problems with you and stuff like
25 that, did you ever have any talks about the chain of command?

1 A. Absolutely. That's one of the first things I communicated
2 when I started to work, because I wanted to let them know the
3 importance of the chain of command and some of the things that
4 we would do. I mean I clearly talked about -- one of the things
5 I said was, okay, if we're going to get things turned around,
6 here's a couple things I want us to do. We're not going to talk
7 about anybody. We're not going to talk about the mayor, the
8 city manager, council, the fire chief. We're going to keep
9 problems in house. We're going to try to resolve problems
10 here. If we can't, after everything goes through the chain of
11 command, you can take it anywhere you want to. Go as high as
12 you want to. I mean no one -- there were never restrictions put
13 on anybody. And I have to believe it worked because nobody
14 else, you know, violated it.

15 Q. Did there come a time when you had learned that Mr. Davis
16 had made some sort of phone call to the mayor about this
17 probationary policy?

18 A. Yes, sir. Chief Hunter called me in my office -- my office
19 was at station one -- and told me that -- a conversation that he
20 had heard about and asked me to have Mr. Davis come down -- he
21 was on duty -- to station one and find out what happened, which
22 I did. I asked the assistant chief to get Davis to come down
23 with his crew, and I asked them to come into the assistant
24 chief's office with myself and then the assistant chief -- or
25 acting assistant chief at that time was Bobby Brooks and his

1 captain, George Bennett.

2 And I told them, I said, the reason you're here is because
3 of what the chief has been told. And I just need to know, did
4 you do this. And he said he did talk to the mayor. I said, did
5 you go through the chain of command? He said no, he did not. I
6 looked at his captain and I said, did he go through the chain of
7 command? He says, no, he did not.

8 So I was very -- the whole time I was very polite and
9 professional. I said, okay. David, what I need you to do is
10 this. I need you to go next door into the office -- there's no
11 one in there -- and type up a letter to the chief stating
12 exactly what happened. And he did. And he said what he did he
13 did because he was the president of the union.

14 And then when he finished the letter and gave it to me, then
15 we walked down to my office. And I told him, I said, I'm going
16 to take the letter now and take it to Chief Hunter. And I did.
17 This whole thing took place over -- from the time that he was
18 contacted until the time he got back to the station that
19 afternoon, you're talking about a total of 90 minutes. That's
20 it.

21 Q. How do you know that?

22 A. Because the information was taken from the computer-aided
23 dispatch system in 911.

24 Q. So if Mr. Davis -- well, it wasn't four or five hours, was
25 it?

1 A. Absolutely not, sir. Because when the fire truck leaves for
2 anything, emergency or nonemergency, the time is reported to 911
3 in any department.

4 Q. All right. Did you have anything to do with writing this
5 up?

6 A. Yes, sir. I prepared the disciplinary report form.

7 Q. And let me get that form real quickly.

8 (Brief pause)

9 MR. MCKOON: Here it is. All right. Let me go get
10 this.

11 Q. All right. Chief Waters, I'm going to put this up here.
12 It's this document here. Do you recognize that document?

13 A. Yes, sir, I do.

14 Q. Let me look and see whether I can find it in this exhibit
15 book so the jury can refer to it. Well, I'll find it in a
16 minute. In the meantime, as part of your consideration of this
17 offense -- first of all, did you consider this to be a serious
18 matter?

19 A. Yes, sir. I definitely do. The chain of command is
20 critical to the morale in the department, for a harmonious work
21 environment, and for the safety and survival of personnel, both,
22 you know, in emergency/nonemergency situations. You cannot
23 afford to compromise the chain of command at any level at any
24 time for any reason.

25 Q. And why is that?

1 A. Because people's life depend on it. And, you know, you
2 cannot undermine the authority of your supervisors. That's why
3 they're in place. Rules are in place to be enforced, and the
4 chain of command is one way of seeing that that's done. Just
5 like on -- in an emergency situation, you could cause somebody
6 their life if you compromise the chain of command.

7 Q. Well, of course, now, if -- you know, just sitting here
8 today and you think, well, him calling the mayor, I mean how --
9 that doesn't compromise anybody's life, does it?

10 A. Well, you know, when people know that you have violated, you
11 know, a standard operating procedure, it does. And furthermore,
12 the mayor had -- in the form of government that Phenix City has,
13 the mayor has no legal authority.

14 Q. Okay. It's -- in the white book, it's Exhibit #17. Is this
15 your signature on the second page of the document?

16 A. Yes, sir.

17 Q. When you signed this document, was all of this stuff that's
18 on the first page on it?

19 A. Yes, sir.

20 Q. All right. Where did this -- where did this stuff come
21 from?

22 A. From Mr. Davis's personnel file.

23 Q. All right. Did you have anything to do with reviewing his
24 file before recommending the type of offense that would be
25 imposed here?

1 A. Yes, sir. Before any offense is going to be rendered, you
2 look at the personnel file for previous discipline.

3 Q. And does that play into what type of discipline is going to
4 be imposed in any particular situation?

5 A. Yes, sir.

6 Q. And is that in accordance with the merit system?

7 A. Yes, sir.

8 Q. So this was not a first offense.

9 A. No, sir.

10 Q. And Chief, maybe you could help me. Let's look at Section
11 14 of the -- of the merit system, which I believe starts on page
12 50. Do you see that? It's in that white book. And -- I'm
13 sorry. The exhibit is Exhibit #13. So go to tab 13, page 50.

14 (Brief pause)

15 Q. All right. Now, let's look over to page 51 where it says
16 14.05 there. The heading is Three Groups of Offenses.

17 A. Uh-huh.

18 Q. Would you just read that first sentence into the record?

19 A. Under 14.05?

20 Q. Yes, sir.

21 A. The progressive discipline procedures of the city are based
22 on three groups of offense.

23 Q. Okay. What does progressive discipline mean?

24 A. Progressive discipline is something that's used probably in
25 most agencies today where the -- the discipline is based on what

1 a person does. So it will start off, and everything that
2 happens over his or her career is going to be listed so that it
3 starts off with the lesser offenses and moves up to the more
4 serious so that you won't go in there, if someone committed an
5 offense that's viewed as not being that serious, and try to
6 terminate them. It's going to be based on a progression
7 throughout his or her career.

8 Q. And then if you turn over to page 52, you see a -- kind of a
9 list of group I offenses; is that correct?

10 A. Yes, sir.

11 Q. And it shows the progressive punishments for it right at the
12 top.

13 A. Yes, sir. Yes, sir, it does.

14 Q. And then on the next page is group II offenses. Do you see
15 that?

16 A. Yes, sir.

17 Q. And what is the -- what is the punishment, I guess, for a
18 group II offense on the second occasion?

19 A. Discharge.

20 Q. And on a group III offense, what's the punishment?

21 A. First offense, discharge.

22 Q. Looking at the -- going back for just a moment to the
23 Exhibit #17, Defendants' Exhibit #17, would you tell the jury
24 what you took into consideration -- well, let me -- let me back
25 up just a minute. Are you the one that decided what -- how the

1 offense would be classified here?

2 A. I'm not sure I understand the question.

3 Q. In other words, whether it would be group II, group III,
4 what it was going to be?

5 A. No, sir. That's -- to me, the information for the group I,
6 II, and III is clearly indicated in the merit system.

7 Q. All right. So you take the facts and just apply it to the
8 merit system --

9 A. Yes, sir.

10 Q. -- and that's what gives you the classification.

11 A. Yes, sir.

12 Q. And did you do that?

13 A. Yes, I did, sir.

14 Q. All right. And in considering all of that, did you also
15 look at the record that Mr. Davis previously had?

16 A. Yes, sir.

17 Q. In looking at that record, did it come to your attention
18 that he had previously violated this ASOP 12?

19 A. Yes, sir.

20 Q. And when was that?

21 A. The -- that happened, I think, prior to me coming on board,
22 as far as the -- in that particular paragraph right there where
23 he was written up for that.

24 Q. Right.

25 A. But I think it was back in September, if I'm not mistaken.

1 And then, of course, the same thing would apply this time, as
2 far as the chain of command goes here, too.

3 Q. Once you wrote this up, what was the next step that you
4 took -- oh, let me go back to something just a minute. I
5 forgot. Who all did you say was present when he was brought
6 into the station to talk about this?

7 A. Captain Bennett, which is his captain and immediate
8 supervisor, and at that time, it was Captain Brooks. He was
9 his -- he was the acting assistant chief.

10 Q. All right. And that was Captain George Bennett?

11 A. Yes, sir.

12 Q. Did -- was anything ever said to you or any information ever
13 given to you about whether or not Mr. Davis had spoken to
14 Captain Bennett about talking to the mayor before he did it?

15 A. No, sir. I just -- the question I asked was did -- you
16 know, did you talk to the mayor. And he said yes. And I said,
17 did you go through the chain of command. And he said no. And I
18 looked at his captain and asked him the same thing, and he said
19 that he did not go through the chain of command.

20 Q. Okay. So both Mr. Davis denied going through the chain of
21 command and Captain Bennett, who was standing there, denied he
22 had done it also.

23 A. Yes, sir.

24 Q. After that happened and you wrote this up, what happened
25 next?

1 A. Gave it to the chief.

2 Q. Was Mr. Davis then sent on back to his station?

3 A. Yes, sir. That day. Yes, sir.

4 Q. And I believe you said all that took about 90 minutes?

5 A. Now, the day that this was written, when -- let me clarify
6 that. When I met with Mr. Davis and Captain Bennett and Captain
7 Brooks that day and I asked David to write the letter up and
8 then I looked at the letter and told him what I -- I was taking
9 it to the chief. I went back and gave it to Chief Hunter. It
10 was, I believe, the next day when Chief Hunter, you know, had
11 reviewed it and said to go ahead and have his assistant chief
12 call him in or assistant chief get him to report to personnel.
13 So the first time that Mr. Davis would have seen that would have
14 been in personnel.

15 Q. All right. If you would, turn over to tab 12. Is that the
16 letter that you asked Mr. Davis to write up?

17 A. Yes, sir.

18 Q. In that letter, did he ever mention that he had followed the
19 chain of command?

20 A. No, sir.

21 Q. Did he ever say he had talked to anybody in his chain of
22 command that had approved him calling the mayor?

23 A. No, sir.

24 Q. All right. What was your next participation in this?

25 A. Chief Hunter, when he told me to have the on-duty assistant

1 chief at that time to call Mr. Davis in and tell him to report
2 to personnel. Then a meeting was set up to bring Mr. Davis in
3 to personnel. And I was there, the chief was there, and
4 Ms. Goodwin was there.

5 Q. In taking this action -- or let me ask you this. Did you
6 recommend this to the chief, or how did this -- how did the
7 decision come together, I guess is what I'm trying to ask.

8 A. The decision comes from the merit system. It's not
9 optional. The merit system says the second group II is
10 discharge. The first group III is discharge. So it's not like
11 a decision has to be made. It's clearly, you know, outlined in
12 the merit system.

13 Q. Did you notice whether or not Mr. Davis had any issues with
14 Chief Hunter while he was there?

15 A. I don't know if he had any issue with him. I -- I don't
16 think that they had any kind of relationship.

17 Q. Okay. And what makes you say that?

18 A. Perception. I think that -- you know, I have talked to
19 Mr. Davis on a couple of occasions, and I think that he -- he
20 may have had some issues with Chief Hunter; I don't know. I
21 mean he -- I know that on one particular meeting when -- one of
22 the most important things that happened while I was there, they
23 had taken swap time away originally and Chief Hunter was able to
24 go and have the swap time put back in the department. And the
25 people in the department, everybody was extremely pleased about

1 that. And when Chief Hunter came down to meet with all the
2 personnel and explain to them how the policy was going to work,
3 David, during the whole meeting, would just sit there and look
4 out -- stared out the window. And I had even told everybody
5 when the chief gets through explaining this, I wanted them to
6 all get up and shake his hand.

7 MR. BROWN: Objection, Your Honor. I'm sorry. Out of
8 courtesy to the witness, I withheld my objection. But the
9 witness started out speaking about his perceptions rather than
10 his firsthand knowledge. We object on the grounds of not
11 speaking within his personal knowledge of this incident.

12 THE COURT: I think he got into speaking of his
13 personal knowledge with what he observed there.

14 MR. BROWN: Might we have the portion of the transcript
15 that reflects his perceptions rather than firsthand knowledge
16 stricken, please?

17 THE COURT: All right. Members of the jury, don't
18 consider anything that might have been just his perception of
19 the workings of the mind of the plaintiff.

20 Q. (Mr. McKoon, continuing:) Let me ask you -- well, first of
21 all, let me ask you for a minute about swap time. What was
22 that?

23 MR. BROWN: Objection, Your Honor. Relevance.

24 THE COURT: Well, that's what he just testified about
25 was the subject of this conversation without objection.

1 Overruled. Go ahead.

2 A. One of the things that the firefighters were dissatisfied
3 about in Phenix City was the fact that they had had swap time
4 privileges originally, and they were suspended for a period of
5 time. What swap time is, it allows -- because firefighters work
6 24 hours at the station and then they're off for 48, it allows
7 them to have someone work for them in their place, and then they
8 pay them that time back. And it is a major deal, I can tell
9 you, in the fire service because of the work schedule. And I
10 can tell you that everybody was extremely pleased when -- when
11 Chief Hunter was able to get the swap time put back in.

12 Q. And what was Mr. Davis's reaction to that?

13 A. During the meeting, he stared out the window the whole
14 time. And his captain, George Bennett, and his assistant chief,
15 Mickeal Hanson at the time -- when the meeting was over, I
16 called them into my office. And before I said anything, they
17 said, I know what you're going to say; and they said, we noticed
18 it too. He was just staring out the window. And when they said
19 something to Mr. Davis, he just said the chief was just doing
20 his job.

21 Q. So you had specifically asked him to show some respect to
22 the chief and shake his hand. And his opinion about that was,
23 he was just doing his job. He's not to be congratulated.

24 A. That's what -- well, that's what he told me. Yes, sir.

25 Q. This ASOP number 12, in your mind, does it relate to any

1 work-related business of the fire department?

2 A. Yes, sir.

3 Q. And I'm going to show you -- I guess I'll go to the exhibit
4 book once again and I'll refer to it one last time. Let me find
5 it. Go to tab 14 in the white exhibit book. It says here --
6 under scope, it says this procedure shall be followed by all
7 members of the Phenix City Fire Department. And I guess my
8 question to you is there's been some talk about if a firefighter
9 is off duty, that he -- he's not bound by the SOPs. You've been
10 a fire chief for 32 years and a deputy chief for a year at some
11 point in time. Is that -- what is your experience in regard to
12 SOPs and firefighters?

13 A. That they apply. I think if you asked any fire chief,
14 they'll tell you we're on duty 24-7. We are held to a higher
15 standard, and that's why it's so important. Whatever you do on
16 duty is -- the same thing is going to apply off duty.

17 Q. Are you currently with the Phenix City Fire Department?

18 A. No, sir.

19 Q. How long have you been away from the department or
20 unemployed, however you want to put it?

21 A. A little over a year.

22 Q. Okay. The offenses that you looked at when you were writing
23 up this written warning form, did you pretty much go through all
24 of them and look at them?

25 A. Yes, sir. It had to be attached to it. Yes, sir.

1 MR. MCKOON: I believe Chief Hunter has gone over them,
2 so I don't think I'm going to go over them with you again. I
3 believe that's all I have at this time.

4 THE COURT: Mr. Brown?

5 MR. MCKOON: Judge, may I ask one more?

6 THE COURT: All right.

7 MR. MCKOON: I apologize.

8 Q. Was this particular proposal about probation -- about the
9 probationary period, was it, in your judgment, related to
10 operations or procedures which are work-related within the fire
11 department?

12 A. Yes, sir.

13 MR. MCKOON: That's all.

14 THE COURT: Mr. Brown?

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q. Good afternoon, Chief Waters.

18 A. Good afternoon, sir.

19 Q. My name is Gary Brown. It's my privilege to represent the
20 plaintiff in this matter. You spoke of the probation period in
21 your direct examination. Do you remember that testimony, sir?

22 A. Yes, sir.

23 Q. And I believe you termed that 18 months a great thing; is
24 that correct?

25 A. Yes, sir.

1 Q. Do you consider that other great fire departments may have a
2 probation period of 12 months?

3 A. They may have.

4 Q. Are you familiar with the largest fire department in the
5 state?

6 A. No, sir.

7 Q. You've been in fire service for 34 years?

8 A. Yes, sir.

9 Q. And you don't know what's the largest fire department in the
10 state of Alabama?

11 A. No, sir. I've been in fire service 32 years and ten months
12 in Columbus, Georgia. I was a deputy chief over here for 13
13 months. And believe me, my focus of attention was trying to get
14 the things that Chief Hunter wanted accomplished taken care of.
15 So my concern was the department at Phenix City.

16 Q. You testified that 18 months' probation was a great thing,
17 but you wouldn't know whether or not the Birmingham Fire
18 Department has a 12-month probationary period, would you, sir?

19 A. No, sir, I would not know that.

20 Q. And you characterized the atmosphere at the Phenix City Fire
21 Department when you came as rather typical things that were
22 going on, didn't you, sir?

23 A. A lot of the comments they brought to me were comments that
24 you're going to hear in a lot of departments, honestly.

25 Q. And "typical" is just ordinary, everyday things, isn't it,

1 Chief Waters?

2 A. Yes, sir.

3 Q. And so when you got here to the Phenix City Fire Department,
4 did you testify it was in December of '05?

5 A. Yes, sir. I believe I started work December the 19th, if
6 I'm not mistaken.

7 Q. Matters were rather ordinary and everyday and typical. Is
8 that what you testified?

9 A. They had some challenges, like I said earlier on. But I
10 don't think it was -- you know, the conditions were terrible by
11 any means. They had some challenges.

12 Q. And so any -- there was no disruption going on in the fire
13 department during that time that was really out of the ordinary
14 and typical. It was just challenges, wasn't it, Chief Waters?

15 A. Disruption meaning what?

16 Q. Excuse me?

17 A. Disruption meaning what?

18 Q. You said the atmosphere of the fire department was typical
19 and ordinary and everyday life, did you not, sir?

20 A. Yes, sir. And the only thing I -- and I clarified it by
21 saying the only thing that was different was that when I got
22 there, the people were not talking to each other, I mean not
23 like you would normally find. And if someone was talking to
24 someone else, they referred to them by their last names, which
25 is something that was not real common to me, what I was used

1 to. But there -- and I told you that there were some suspicions
2 about some things. And the communication process, they had
3 concerns about that. But that is typical, I can tell you, in my
4 experience.

5 Q. And so being typical, just a few months after an article had
6 appeared in the newspaper, things had become typical. And I
7 accept your testimony on that.

8 Now, you spoke of the proposed ordinance to change the
9 probation period from 12 to 18 months. Do you recall that, sir?

10 A. Yes, sir.

11 Q. And did you not state that you discussed that in numerous
12 meetings?

13 A. Yes, sir.

14 Q. And we agree that there was a communication problem going on
15 in the fire department at the time; is that correct?

16 A. Yes, sir.

17 Q. Isn't it true that the issue of the probation period had
18 come up at a time prior to the time when the plaintiff had
19 contacted the mayor?

20 A. I'm not real sure I understand your question, sir.

21 Q. Okay. Was the change -- the proposed probation period --

22 A. Yes, sir.

23 Q. -- that was being considered by the city council --

24 A. Yes, sir.

25 Q. -- in April of 2006, was that the first time that the

1 probation period had been addressed by the city council in
2 recent months?

3 A. It was -- since I had been there. Now, I don't know about
4 prior to that.

5 Q. So you don't have any common knowledge whether or not
6 another rendition or version of the probation period had come
7 before the city council before, do you?

8 A. Before I started work? No, sir.

9 Q. Okay. It was only one time; is that correct?

10 A. When I started work and when Chief Hunter brought it to my
11 attention is when I started communicating it to the people in
12 the field. And the questions and concerns they had were
13 addressed. And they were, does it apply to, you know, currently
14 employed personnel and does it apply to promotions when you get
15 promoted.

16 Q. And so all of those meetings that you went and held and
17 spoke about the probation period, not one time did any of the
18 firefighters say, Chief Waters, this has come up before and it
19 was a bad thing?

20 A. If they did, I don't recall it, sir. Because when I started
21 explaining it, one of the things I said was, you know, we had
22 this in Columbus where I was -- just retired from. And I said,
23 it's not a bad thing. I said, I can't think of anything that's
24 bad about it, because it really does relieve a lot of pressure
25 on someone coming to the fire service where he or she has got to

1 learn and get certified in and accomplish in a very short period
2 of time. And so once again, sir, the only two people that I
3 recall saying anything at all about it were two firefighters
4 that had asked Chief Hunter about specifically is this going to
5 apply to us on our probation, because I think they were fixing
6 to come off of probation.

7 Q. But you didn't tell the firefighters with particularity when
8 that ordinance was going to be coming up on the city council
9 docket, did you, sir?

10 A. No, sir, I did not. Because what happened was when Chief
11 Hunter first brought that to my attention and told me to go out
12 and let the personnel in the field know, I did. And then I
13 guess when everything was -- I guess the final draft was
14 approved and everything and they were going to take it to the
15 council was when Chief Hunter came out to the stations and
16 actually talked to the people in the field on all three shifts.

17 Q. And you were trying to improve communications; is that
18 correct?

19 A. Yes, sir.

20 Q. But you didn't think to make a copy of the ordinance and
21 pass it out to all the firefighters, did you?

22 A. No, sir.

23 Q. Okay. And, you know, you didn't post a copy of that
24 proposed ordinance in any of the fire stations, did you, sir?

25 A. No, sir.

1 Q. And you don't know for a fact, do you, sir, when this
2 gentleman or any other firefighter for the Phenix City Fire
3 Department first found out about when that ordinance, with
4 particularity, was going to be on the city council docket, do
5 you?

6 A. No, sir, I don't know that one --

7 Q. That's correct. Thank you. The ordinance originated, did
8 it not, sir, from the management of the department?

9 A. The chief is the one that brought it to me. Yes, sir.

10 Q. Okay. So we know that the upper management of the city had
11 the information, correct?

12 A. Yes, sir.

13 Q. But what we don't know and what has not been established --
14 and in fact, we -- we understand that the rank-and-file members
15 who were concerned about it didn't have a copy.

16 A. They didn't have a copy, sir, but no one expressed any
17 concern or questions other than the two firefighters.

18 If -- and the thing about it, I think if you asked the
19 firefighters in the department specifically about me, could
20 they -- do they feel free they could come to me and talk to me
21 about anything if they had a problem or whatever, I believe that
22 the vast majority of them would have told you absolutely. And
23 when they didn't bring up any questions and concerns -- I mean
24 can you understand -- I'm not asking you to agree, but can you
25 understand why, to me, and I think -- and I'm not speaking for

1 the chief, but it's not -- it was a nonissue, because no one had
2 any concerns about. When it was explained that -- you know,
3 what the objective would be and -- and the fact that it would
4 not impact anybody that's currently working, I don't understand
5 how that --

6 Q. But, sir, you would agree with me, wouldn't you, that the --
7 that a better way of communicating what was going to be on a
8 one-page ordinance would have been to say, here, folks, have the
9 ordinance. Correct?

10 A. Yes, sir. You could have done it. But the fact of the
11 matter is nothing changed from what they were told to what come
12 out on the ordinance. It was the same thing.

13 Q. And verbal communications can be miscommunicated when
14 they're passed from one person to the other, can't they?

15 A. Yes, sir.

16 Q. Thank you. So if there is some fault to be assigned that
17 the rank and file did not have a copy of this ordinance, which
18 we know after the fact many did have concerns with, it wasn't
19 the fault of the rank and file. It was the fault of the folks
20 who had the document, wasn't it?

21 A. I guess you can say that, sir. But get -- if they had these
22 concerns, why didn't they communicate from their part? Because
23 communication is a two-way process, not just from the top down,
24 but from the bottom up. So if they had these concerns after,
25 why did they not bring it up when they were bringing up other

1 problems in the department and we were resolving them pretty
2 much as quick as they brought them up, if we possibly could?

3 Q. And at the time that Mr. Davis was alleged to -- and we have
4 established he did in fact phone the mayor -- it had already
5 gone beyond the department level to do anything about, hadn't
6 it?

7 A. No, sir. I think that had the chain of command been
8 utilized, I'm -- I can't speak for the chief, but I feel
9 reasonably sure had Mr. Davis brought it up through the chain of
10 command, at least it would have gotten to me. I would have
11 called the chief and said, look, we've got a problem. I don't
12 think it was imperative that it went to council on any
13 particular day. I think they would have stopped it. They would
14 have tabled it and let whatever concerns and issues be
15 addressed.

16 Q. You think that, but you don't know, sir?

17 A. Well, I told you, I cannot speak for the chief.

18 Q. Thank you, sir. And you don't know for a fact that you
19 actually invited the plaintiff to come to your house.

20 A. I don't know that for a fact?

21 Q. Thank you, sir.

22 A. No, sir. I was -- I was stating what you said.

23 Q. Thank you, sir.

24 A. He had been, as all 50-something people in operations.

25 Q. And you don't know for a fact, as you testified, do you,

1 sir, that he and the chief had had any issues?

2 A. Not specifically. No, sir.

3 Q. Thank you. Now, you, a 30-some-odd-year veteran of the fire
4 department, would you agree it's a rather unique working
5 environment?

6 A. Yes, sir.

7 Q. And would you agree that even today or even at the time that
8 the plaintiff had his incident with the city, largely male
9 dominated in firemen?

10 A. Yes, sir.

11 Q. And I think we probably agree that there have been times in
12 male dominated, competitive environments that people -- men are
13 reluctant to, shall we say, tell on the other men when issues
14 happen in the fire department?

15 A. What specifically are you talking about?

16 Q. You were asked a series of questions about whether or not
17 the plaintiff and Captain Bennett -- or whether it was told to
18 you that -- whether or not Captain Bennett had in fact given him
19 some sort of a permission up through his chain of command. And
20 you did answer you didn't know that, right?

21 A. I asked Captain Bennett -- I asked Mr. Davis first, did you
22 go through the chain of command. And he said no. And that's
23 when he told me, he said, I did this acting in my capacity as
24 president. And I asked his captain, who was sitting right next
25 to him, did he go through the chain of command. He said no.

1 Q. And my question to you, sir, though, is that you would agree
2 that sometimes men in that close working environment are
3 reluctant to get their coworkers in a spot of trouble?

4 A. That can happen. Yes, sir.

5 Q. Have you ever seen that happen?

6 A. Yes, sir.

7 Q. I thought so. And you also spoke of an incident where the
8 plaintiff was given some sort of counseling or spoken with about
9 looking out the window during a meeting. Is that -- do you
10 recall that testimony?

11 A. Yes, sir.

12 Q. And do you recall whether or not the plaintiff explained to
13 you that his mother was having surgery?

14 A. He did not say anything about that.

15 Q. On that very day?

16 A. No, sir, he did not. At least not to me.

17 Q. Let me direct your attention again to Plaintiff's Exhibit
18 #21. That would be in your black book. And you recall
19 Mr. McKoon asking you a series of questions about that document,
20 don't you, sir?

21 A. Just a minute, now. This is what exhibit, sir?

22 Q. Plaintiff's Exhibit #21 in the black book. And do you
23 recall the line of questioning that you received on direct
24 examination about that document?

25 A. Yes. Yes, sir.

1 Q. Okay. Now, can you explain for me, going down to the bottom
2 of the first page, Plaintiff's Exhibit #21, starting with the
3 sentence, "Discharge as per merit system rules and regulations
4 for second group II offense. Discharge as per merit system
5 rules and regulations for first group III offense." Is that a
6 correct reading of that sentence?

7 A. Yes, sir.

8 Q. Okay. And we can agree that that sentence contains the
9 reason that the plaintiff was discharged, correct?

10 A. Yes, sir.

11 Q. Okay. Do you know, sir, what the second group II offense
12 was that this document references?

13 A. I -- I believe it was -- now, I don't have those documents
14 in front of me. Do you -- are they listed as an exhibit in here
15 so I could refer back to them?

16 Q. I'm just asking if you can tell from that document what it
17 was.

18 A. I mean can I read it real quick?

19 Q. Sure.

20 A. Okay. The first group II, according to this, would have
21 been August the 3rd, written warning form, group II, line two.
22 And then the second would -- would have been the -- I guess the
23 violation of him going to the media. It's got September 30th
24 (sic), 2005, violation of directive --

25 Q. Excuse me. I want you to tell me what the -- if you can --

1 I'll tell you --

2 MR. BROWN: We'll strike that.

3 Q. Let me give you something that might help refresh your
4 memory. Do you recall having your deposition taken in this
5 case, Chief?

6 A. Yes, sir.

7 MR. BROWN: Okay. Your Honor, permission to approach
8 the witness and show him his deposition.

9 THE COURT: You may.

10 Q. And would you please, sir, open your deposition to page 31?

11 A. Yes, sir.

12 Q. And the question that was posed to you on the bottom of page
13 31 at line 20 states: So just -- just so the record is clear,
14 the discharge concerning the first group III offense would have
15 been focused on the telephone call and the conversation that
16 Davis had with the mayor; is that correct?

17 A. That's what the question is.

18 Q. Yes, sir. And your answer was what?

19 A. Do you want me to just read it to you?

20 Q. That would be fine.

21 A. Okay. My interpretation would be the insubordination where
22 the city manager had written a letter stating that the city does
23 not recognize a union and that any business, as such, something
24 along those lines, has to go through the city manager. And that
25 was the point of the conversation that we had in the office with

1 David and Captain Bennett and Chief Brooks to ask you -- to ask
2 did you, in fact, go through the chain of command with
3 supervisors and whatever, and it was not. So my understanding
4 is that the city manager, when he wrote that memo stating that
5 the city does not recognize a union and that any dealings were
6 to go through him, something along those lines, specifically --
7 so that, in effect, was my interpretation of the
8 insubordination, because you had a directive stating you could
9 not do it.

10 Q. Okay. Chief Waters, and if you'll follow me, the next
11 question that was asked to you on that same page, page 32,
12 states: Okay. And Mr. Woodley in your deposition said: Let me
13 state it the opposite way. If Mr. Davis had not placed the
14 telephone call to the mayor in April of 2006 and had not that
15 telephone conversation, he would not have been charged with a
16 second group II offense; is that correct?

17 A. That's right. There would have been no violation.

18 Q. Right. Next question: Right. Same question.

19 Turning to page 33.

20 If he had not placed the telephone call and had the
21 telephone conversation with the mayor in April of 2006, he would
22 not have been charged with the first group III offense; is that
23 correct?

24 A. Yes, sir.

25 Q. And your answer that day was what?

1 A. That's my understanding. Yes, sir.

2 Q. And if he had not placed that telephone call, he would not
3 have been discharged; is that correct?

4 A. Yes, sir.

5 MR. BROWN: Thank you, sir.

6 THE COURT: Mr. McKoon?

7 MR. MCKOON: Judge, I have no further questions of
8 Mr. Waters.

9 THE COURT: All right. You can come down, Mr. Waters.

10 MR. MCKOON: May I approach for just one moment? Just
11 one moment.

12 THE COURT: All right. Just a minute.

13 MR. MCKOON: I don't need the court reporter.

14 THE COURT: Pardon?

15 MR. MCKOON: I don't need the court reporter.

16 (Bench conference held off the record)

17 THE COURT: Ladies and gentlemen, I think you'll be
18 pleased to hear this. There's a witness who has been available
19 but has gotten unavailable but will be tomorrow morning, and
20 he's not supposed to take too long. But the point is that the
21 lawyers and I will be able to do some things that have to be
22 done outside of your presence this afternoon instead of taking
23 up your time tomorrow. So in the long run, it may save us some
24 time. It won't cost us any time. So we're going to recess
25 until tomorrow morning at nine o'clock and take up these other

1 matters.

2 So I'll remind you, you're still under instructions not
3 to discuss the case with anybody or let anybody discuss it with
4 you or in your presence or among yourselves, and you're not to
5 listen to anything or read anything about the case. I ask you
6 to be back in the jury room in time to come in and resume the
7 trial tomorrow morning at nine o'clock. Nine o'clock.

8 (Jury out at 4:00 p.m.)

9 THE COURT: All right. We're in recess until nine
10 o'clock. And I'll see counsel in chambers.

11 (Chambers discussion held off the record)

12 (Evening recess at 4:28 p.m.)

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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

This 16th day of May, 2008.

/s/ Risa L. Entrekin
Registered Diplomate Reporter
Certified Realtime Reporter
Official Court Reporter